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Supreme Court, U.S.
FILED

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No. (1)
CORRECTED
IN THE
Supreme Court
Of The
United States
In Re,
Verlyn E. Richards, Pro Se
Richards
V.
M.S.P.B
Respondent
And/ Or
Department of the Army
Petition for an Extraordinary
Writ in the Nature of Mandamus
Or, In the Alternative,
On Petition for a Writ of Certiorari to
the United States Court of Appeals
For the Federal Circuit,
And/ Or
On Petition for a Writ of Certiorari to
the United States Court of Appeals
For the Sixth
Circuit.
PETITION FOR A WRIT OF
CERTIORARI

Verlyn Richards,
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(248) 809 2014; (810) 8746076

i. QUESTIONS PRESENTED

Whether the agency through its proxies and agency attorneys' conduct outlined herein constitutes fraud on the court, and / or agency attorneys' misconduct, sufficiently serious to require the Court to exercise its supervisory and equitable powers.

Whether the agency through its proxies and agency attorneys' conduct outlined herein violated Petitioner's constitutional first amendment substantive due process rights by penalizing her in retaliation for her protected protests and exercising her specific duty under AR 27-26 Rule 113 (c) to notify those proxies, when she believed they were about to or were violating law and to raise the issue to higher commands through the legal chain when they refused to correct and removed her from employment by triggering and participating in an illegal reinvestigation of her security clearance violating multiple security clearance procedural directives and regulations and denying her minimum due process .,

ii. LIST OF PARTIES

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v. JURISDICTION

The judgment of the Federal Court of Appeals was entered May 11, 2007. A petition for rehearing was denied on August 3, 2007 (Pet. App_____). November 28, 2007, Chief Justice Roberts extended the time within which to file a petition for a writ of certiorari to December 31, 2007. The petition for a writ of certiorari filed on the jurisdiction of this Court rests on 28 U.S.C. 1254(1).

vi. PRELIMINARY STATEMENT

1 Richards is pro se on appeal because she has no choice. Attorney fees and costs $200,000.

2 Adequate Relief Cannot Be Obtained Anywhere Else. The Court must combine Richards' Federal and Sixth Circuit appeals, which are inextricably entwined with the fraud issues presented. The 'fraud' issues impacted the two circuits. The Court must intervene, exercise its equitable power to protect the integrity of the judicial system, and enforce the requirements of conscience and good faith to prevent a miscarriage of justice, and the Sixth and Federal Circuits from acting as abettors of iniquity, *Precision Instrument*, 324 U.S. 7703 at 8145 (citing *Bein v. Heath*, 47 U.S. (6 How.) 228, 247 (1848). *Hazel-atlas Glass Co. V. Hartford; Keystone Driller Co. V. Gen. Excavator co.* 290 U.S.240, 245-46(1933) ("*Keystone I*"). The agency through its proxies and agents, attorneys, expert witnesses, and investigators have abused process in both forums committed fraud on the court through misrepresentations and nondisclosure and played a 'dirty' game. Attorneys have violated their professional responsibility to ensure fairness to the opposing party and be candid with the lower circuit courts of appeal / MSPB/ District Court. The AUSAs crossed the line, misrepresented agency regulations and represented agency proxies' multiple false material statements as true . There is yet to be a judicial body that examined the totality of the evidence to include Richards' violated terms of employment and regulations with direct nexus to Richards' duties, E.g., Richards' 245 page affidavit, incorporating nine volumes of evidence and ninety single exhibits testimony. and the security clearance investigation at issue. The district court failed to review 95% of provided and correctly cited material evidence. The AJ did the same. The Sixth Circuit's affirmation of the district court's grant of summary judgment to Defendant by filing a per curium opinion, February 15,

2007, in reliance on the SJH transcripts and the district court's (DC's) grossly harmful and indisputable factual and legal error in adopting the AUSA's misconstrued Supreme Court precedent and grossly misrepresented parsed material facts as true, rather than doing its homework, shocks the conscience. 'Overlooked' is too kind. The SJH transcript on its face establishes the district court with reckless disregard failed to review the evidence submitted, had minimal, if any, knowledge of indisputable material facts, before the hearing date, adopted the AUSA's gross misrepresentation of material facts, and erroneously misconstrued the law. The Sixth Circuit failed in its' duty to consider all evidence favoring the nonmoving party that was not impeached (in this case indisputably no evidence was impeached) by finding,

> "[Richards] claims in the aggregate (which the AUSA misrepresented as ten 'acts,' when sixty are closer to the mark), suggest no more than that she was quick to assert "harassment" or gender discrimination, when a workplace decision did not go exactly as she desired.

3 The Federal Circuit relied on the Sixth Circuit invalid judgment, presented in the agency's reply to Richards' petition, and adopted the AJ's Initial Decision (ID), wherein the AJ adopted the agency representative's (ARep's) adoption of the AUSAs' false misrepresentations .in the district court. The lower court /Board/AJ "overlooked" Richards' allegations of duress, misrepresentation, coercion, violation of agency regulations, and statute with direct nexus to Richards' terms of employment and serious illnesses, and supporting evidence, which establishes Richards was left without free choice from 1996 to the present and her retirement was involuntary. Seventeen witnesses support Richards' claims including SES males (Reeves). Those who falsely testified include a Lieutenant General, two Major Generals, two colonels and an SES.

4 There are compelling reasons for this case to be heard. It is a prime example of abuse of coercive power 'run rampant,' attorneys' overzealous commitment of fraud on courts; judges failing to do homework; and appeals courts clearing its dockets of pro se litigants . The impact reaches all private and public employment sectors__ every household. Richards presents comparison evidence (direct quotes), which establish her allegations as true.

5

e Sixth Circuit knew or should have known it committed harmful gal and factual error by choosing to rely on the district court's)C's) adoption of the AUSA's gross misrepresentation of material cts in the oral argument SJHTs, and misconstrued Supreme Court ecedent as true by finding, [Richards] "failed to set forth the ements of a prima facie case because there is no external vidence to show the acts were based on her sex, not enough was id about her sex." *(Harris)*; "The reasons given for the adverse ctions sounded legitimate." Moreover, the court found no arassment, no pretext, no retaliation, when direct evidence tablishes the court erred. There cannot be a legitimate reason, hen Proxies made material false statements, when addressing all eas complained, and the adverse acts violated regulations. PA. e MSPB AJ 'copy catted' via the agency representative.

vii. OPINIONS BELOW

1. The opinions (Pet. App. ??).are not reported. Federal Circuit appeal is from an Opinion and Final Order of the MSPB denying Richards' PFR disposing of all claims between parties, May 12, 2006. finding Richards failed to present new evidence and the AJ made no legal or factual errors, which would affect the outcome of the case, and thus, confirming the Initial Decision holding, (1) Richards failed to make a non-frivolous allegation that her retirement was involuntary based on the CCF decision to revoke her security clearance (R-???); (2) There was an arguable basis for the agency suspending Richards and suspending her without pay. Initial Decision (ID)..

Richards filed notice of petition for review on July 3, 2006, and petition August 21, 20o6, within the period set forth in5 U.S.C. Section 7703. The Sixth Circuit filed its judgment, February 15, 2007. Decided Richards' petition for rehearing en banc was late forty-six days after receiving it. (discussed below) Richards filed Notice, PFR, July 3, 2006, and PFR, August 21, 2006, within the period set forth in 5 U.S.C. § 7703. (Pet. App.??). The Sixth Circuit filed its judgment, February 15, 2007. and found Petition for Rehearing en banc late forty-six days after receiving it. May 24, 2007. Richards timely filed 'Notice of Appeal,' December 28, 2004, pursuant to Rule 4(a)(1)(B). from judgment of the U.S. District Court, Eastern District of Michigan, South Division Hon. Judge Anna Diggs Taylor, presiding, disposing of all parties' claim on cross motions granting summary judgment to Defendant, Appellee. The district court granted Respondents' motion for summary judgment on cross motions for summary judgment October 18, 2004. (Pet. App. ------) by 'Order,' (Pet. App. ??). Jurisdiction was conferred pursuant to 42 U.S.C. § 2000e, et seq. and Rule 4 of the Federal Rules of Appellate Procedure. Administrative Formal Complaint (AFC) was filed October 1, 1999. Richards transitioned from the administrative process, September 19, 2002, three years, four months after initiating contact with EEO Counselor. before hearing, Richards timely filed 'Notice of Appeal,' December 28, 2004, pursuant to Rule 4(a)(1)(B). from judgment of the U.S. District Court, Eastern District of Michigan, South Division Hon. Judge Anna Diggs Taylor, presiding, disposing of all parties' claim on cross motions granting summary judgment to Defendant, Appellee. [redacted] Jurisdiction was conferred pursuant to 42 U.S.C. § 2000e, et seq. and Rule 4 of the Federal Rules of Appellate Procedure. Administrative Formal Complaint (AFC) was , filed October 1, 1999. Richards transitioned from the administrative process, September 19, 2002, three years, four months after initiating contact with EEO Counselor.

before hearing, The district court granted Respondents' motion for summary judgment on cross motions for summary judgment October 18, 2004. (Pet. App. ------) by 'Order,'

viii. STATEMENT OF THE CASE

a) **Background:**

RDecl.¶¶ 24-30.Part II,

Richards advised high-level officers, four star Commanding Generals (CGs) and civilian SESers, Chief Counsels at AMC, major subordinate commands (MSCs),since 1981; supervised GS-15 attorneys in acquisition ,intellectual property law, international, and fiscal law as the AMC Assistant Command Counsel for Acquisition Law and Policy(1989-1996), HQ,AMC Office of the AMC Command Counsel, Washington. Pl. Ex. 9. She was well known throughout the AMC and somewhat well known in the Army Corp of Engineers, headed up an Army-wide subcommittee for training technical evaluators in formal source selections, planned and led the Acquisition Law portion of CLE training for AMC attorneys, led panels in the plenary sessions and facilitated the acquisition portion of "workshops." a frequent Army Road Show facilitator and plenary session speaker.

> "According to her superiors, Richards was "known" throughout the AMC for playing an outstanding leadership role in critical Army programs; was superbly qualified, having managed the legal aspects throughout AMC and its subordinate Commands with extraordinary results. She had dynamic leadership skills, competence in dealing with extremely complex legal issues with national significance, an exceptional gift when it comes to working with people; demonstrated an ability to work well with people, willingness to assist colleagues, work well with top management at all levels within the Army organization, excellent working relationship with peers, treating peers fairly,

tactfully, and diplomatically, a "can do" attitude, exceptional performance, and enthusiasm.(See Letters of Recommendations: Korte, Pl. Ex. 10; Dawes, Pl. Ex. 11; Jones, Pl. Ex. 12; Wise, Pl. Ex. 13; and MacFarlane, Pl. Ex. 14). She earned the respect of all those who work with her for her high moral character, leadership role in the Army Road Shows, and advising high-level people such as the Assistant Secretary of the Army and the Deputy to the Commanding General of AMC. (See Pl. Ex(s). 10-14). In October 1996, after she became TACOM Chief Counsel, she was presented with Vice President Gore's prestigious "Hammer" award for work on Acquisition Reform, while in Washington. Hammer Award Certificate, Pl. Ex. 15.

Richards, a civilian, was use to the military way. One finds more than a usual number of SESers and General Officers (GOs) in Washington, including at AMC headquarters. They are treated with a great amount of respect, and referred to as "Sir," "Mr.," or "Ma'am." It is considered degrading if one addresses a subordinate, or refers to others, not present, without using their rank and names. **PA, P.**. Richards observed the same r military formalities institutionalised at TACOM, when she worked there 1981-1989, and towards male SESs and GO counterparts, when she returned in 1996. Cars and drivers were at their disposal for work purposes. When a GO or SES will be attending a meeting, a seat is saved for them. When a meeting is formal, protocol officers assign seats by a protocol code which each SES and GO have. (DA Protocol Precedence Codes, Pl. Ex. 16; ROI My Doc. Animus § IV- 1). Richards male SES and Brigadier General (BG) counterparts have the same protocol code of P6. (Pl. Ex. 16). **PA, P.**.

Decisions Below:

1 The Federal Circuit relied on the Sixth Circuit invalid judgment, presented in the agency's reply to Richards' petition, and adopted the AJ's Initial Decision (ID), wherein the AJ adopted the agency representative's (ARep's) adoption of the AUSAs' false misrepresentations .in the district court. **PA, P...** The lower court /Board/AJ "overlooked" Richards' allegations of duress, misrepresentation, coercion, violation of agency regulations, and statute with direct nexus to Richards' terms of employment and serious illnesses, and supporting evidence, which establishes Richards was left without free choice from 1996 to the present and her retirement was involuntary.

a) ID, Pg 4, FN 8. "[Richards] does not allege the agency subjected her to duress or misinformation"... instead she alleges the agency coerced her retirement by improperly revoking her security clearance and indefinitely suspending her." **PA, P.. Compare,**

i. Richards' affirmative defenses (AD) and supporting evidence. Involuntary Retirement App, ¶ 4, a-i, V-I, allegations of coercion, misinformation, and duress, factually specific claims of agency impropriety and cited evidence. violation of agency regulations, and statute with direct nexus to Richards' terms of employment and serious illnesses, and supporting evidence, which establishes Richards was left without free choice from 1996 to the present and her retirement was involuntary. **PA, P.**

g. ID P 8, FN 8, "Richards did not show that discrimination or retaliation contributed in any manner toward her claim of involuntariousness." Markon, 71 M.S.P.R. at 578.

i. .

h. . **Compare,**

i. The AJ adopted the ARep's misrepresentation that res judicata applies to Richards' discrimination claim, failed to carefully examine and allot weight to events April 15, 1996- October 16, 2004, when the district court erroneously granted summary judgment to Defendant; the suspension period, September 24, 2004 (when Richards was unceremoniously dismissed from the premises) to Richards' retirement September 25, 2005(eleven months).

ii. Richards introduced indisputable evidence of discriminatory motive disparate harassment /and decisions; Discriminatory remarks showing their stereotypical view of a female in Richards'' role; inconsistent, contradictory, and false statements, demonstrating the reasons given for the disparate treatment were a smokescreen for a discriminatory motive, pretext disparate decisions /harassment ., via direct and circumstantial evidence through the participants own testimony demonstrating a stereotypical view of a female in her position, and violation of law and regulations, and materially alteration of Richards' express duties. **PA, P.**. See, **Ads (a)-(f) PA, P.**; ¶ 7_Andrews, Beauchamp, and Newberry played revengeful devious/ deceitful, and controlling mind games with Richards, App ¶s 11, 13.14, "Richards repetitively engaged in protected activity; CG Beauchamp, even more than Andrews retaliated ¶ 7, **PA, P.?** ; ¶ 2,3, 4, RDecl .

i. ID, P.4, "[Richards] alleged the agency violated the U.S. Constitution and discriminated against her. "The U.S. District Court for the Eastern District of Michigan

granted the agency's Motion for Summary Judgment in the appellant's 1999 sex discrimination suit alleging agency officials subjected her to remarks such as "legal gal,""my girl attorney,""dear," and "young lady;" (AUSAs' first "act.' Derogatory Comments by Andrews and Kirby RDecl, ¶109, **PA, P.**.), seated her in the back row at video conferences (AUSAs' second "act.' **PA, P.**.); denied her awards (AUSAs' seventh "act.' **PA, P.**.)and supervisory opportunities (AUSAs' third "act.' RDecl, ¶ 336, **PA, P**; AUSAs' fourth "act.' Anniston Depot Commander Potts direction not to communicate with Richards in any fashion without his permission. April 11, 1999,. RDecl, ¶ 336, **PA, P**;); refused to accept her, Ninth "act," Law office facilities; AUSAs' tenth "act.' Not selected as advisor to Source Selection Authority); (AUSAs' all acts E.g., fourth; tenth, sixth, "act.' **PA, P.**.) rated her performance disparately low(AUSAs' seventh "act.' SES Performance Award; P 20, L. 1, **PA, P.**.); failed to include her in meetings(AUSAs' sixth "act.' Excluded from the Board of Directors at TACOM RDecl, ¶277, **PA, P.**.;or allow her participation on TACOM's Performance Review Board (AUSAs' eighth "act.' Nonparticipation on SES Performance Review Board (PRB) **PA, P.**.); criticized her performance(AUSAs' seventh "act.' **PA, P.**.); and limited her hiring authority (AUSAs' fifth "act.' Legal Office Staffing: ¶ 124. **PA, P.**.). See Docket No. CH-0752-05-0128-I-1: Agency File, Tabs 4(c) & (I). **Compare,**

i. AUSAs'' misrepresented, 'Ten Acts:]' **PA, P.**. and portion of Time Line, **PA, P.**; ARep's misconstrued law, "Res judicata applies to Richards' discrimination claim. ...Virtually all the incidents referenced in the subject appeal (6th Circuit), which occurred up until August 2004 are included in that Federal District Court Action. ARep's Response (ARR), ¶2, to Richards' involuntary retirement appeal.

ii. ARep's misrepresented direct evidence of retaliation, DENIED AWARDS, Initial Decision (ID), Pg 4,

c) "In this appeal she alleges General Beauchamp told the Equal Opportunity investigators that he did not give her performance awards because she had difficulty working with people and misunderstood the nature of her position (.Misrepresentation of material facts, direct evidence of retaliation based on protected activity). **PA, P.**.Ads (a),(b) **PA, P.**. **Compare,** Beauchamp admits he failed to grant Richards SES performance awards because of her protected protests to him.

"General Beauchamp testified,

"Basis for downgrading Ms. Richards' appraisal objectives and my reasons for not granting her any performance awards, were that, Verlyn had difficulty accepting decisions that she disagreed with. "Lacked understanding of her position as a staff officer" her role and the role of a Commander." had difficulty working with people that did not fit within...constructive environment of an SES is different, more complex and complicated." .... Examples of issues she disagreed with ... seating rating, TDA (Table of Distribution and allowances)," (Can you give some examples other than the areas that were identified as allegations in her Complaint?) No. T. 68, Ln(s) 1-25, 69, Ln(s)1-25,74, 18-25 and75, V-XII; RDecl ¶556,

a. ID Pg 4, Fn 3, [Richards] complained about her treatment prior to her suspension, but did not raise allegations that rise to a specific claim of duress. " [*Fruehauf,* 111 F. Supp. at 951 (the three aforementioned elements were common to all situations in which economic duress had been judicially discerned]. **Compare**,

See App ¶ 3. , **PA, P.**.

ii. The agency's adverse 'acts' before Richards' suspension October 2004, did rise to the level of a claim of duress as the agency, lead by CG Thompson and encouraged by the AUSAs, beginning

2003, ratcheted up and expanded the scope of the adverse 'acts' to target the illnesses and loss of finances it caused in the first place.

iii. Used those illnesses to create false scenarios of poor judgment, the building blocks to trigger an illegal reinvestigation of Richards' security clearance as a means to remove her from employment;

iv. committed an illegal reinvestigation of her security clearance 2004, by violating EOs and implementing regulations, **AD**

b. "There was an arguable basis for the agency suspending Richards, the CCF Decision. **Compare**,

a. "[Richards] has not made a nonfrivolous allegation that the agency knew its indefinite suspension was unsustainable, or that no arguable basis existed for it. **Compare**,

b. ID,Page 4, FN 3, In a related appeal Richards complained about her treatment prior to her suspension, but did not raise allegations that rise to a specific claim of duress. **Compare**,

c. [Richards] alleges deciding official General Ross Thompson abused his discretion by failing to request a waiver; **Compare**,

d. [Richards] does not make an non frivolous claim the agency failed to provide her with the procedural protections required under 5 U.S.C. § 7513, when indefinitely suspending her. **Compare**,

e. [Richards] only procedural allegation was that the agency violated Executive Order No. 12968, Access to Classified Information" by allowing Daniel G. Mehney to propose her suspension and Major General Thompson to decide it], does not support an actionable claim; **Compare**,

f. "Richards failed to allege the agency violated any of the seven procedures referenced in Executive order 12968, (1) comprehensive and detailed a written explanation for the agency's conclusion; (2) satisfaction of relevant Freedom of Information

.and Privacy Act requests within 30 days; (3) information of the limited right to representation and to review documents; (4) provision of reasonable opportunity for written reply and requesting review; (5) identification of reviewer and provided of written notice of and reasons for review results, with appeal rights; ID Pg(s) 4 and 5, Pg 4, FN 5, Pg 5, FN 6, and Pg 6, FN 7. MC (40), Pg.115. ID FN7. **Compare,**

a. Richards protested a number of mandated procedures, which the agency violated. **AD (I)**

See repetitive protests against the agency's late FOIA responses; CG Thompson's refusal to delay the oral and written reply to the proposal to suspend because the CCF's August 18, 2004 decision to revoke does not give a comprehensive and detailed written explanation for the agency's conclusion, per procedure #1;
ID procedure # 2, FN7, (2) satisfaction of relevant Freedom of Information and privacy at requests within thirty days, [App, Statement of Material Facts ¶ 1, incorporating Richards' September 22, 2004 affidavit, Tab P (40) Mahoney Brief, Tab ??, (40) and Richards' request for reconsideration and CCF Response, Tab ??;
Richards states,

c. "The agency violated a number of the seven procedures referenced in Executive order 12968. The army was not an appropriate authority to investigate this matter, where as here, the agency through its high-level proxies is charged with illegal discrimination. September 22, 2004 Aff, Tab P (40), Pg 115, citing DODD 5220.6, and addressing the procedural regulations. ...

d. "Richards believes that the investigative file, when she receives it in response to her FOIA requests will contain documents explaining the reasons for the CCF's conclusions, E.g., ID

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e. ID, Pg, FN2, **According to the agency**, the CCF determined [Richards'] "pathological gambling "in partial remission" was a manifestation of defects in judgment, reliability, and stability.

f. FN5, **According to the agency**, the CCF subsequently rendered a decision to revoke Richards' security clearance permanently and the agency planned to propose Richards' removal. See Appeal File, Tab 11...The CCF also based its decision on a doctor's opinion Richards had "dysthemia disorder in remission." Appeal File, Tab 11,

g. ID, FN2, **According to the agency**, the CCF determined Richards' "pathological gambling "in partial remission" was a manifestation of defects in judgment, reliability, and stability. **Compare**,

h. FN5, According to the agency, the CCF subsequently rendered a decision to revoke Richards' security clearance permanently and the agency planned to propose Richards' removal. **Compare**,

i. The CCF also based its decision on a doctor's opinion Richards had "dysthemia disorder in remission." Appeal File, Tab 11 **Compare**,

j. ID FN 6, [Richards alleges] the CCF failed to consider her medical reports; **Compare**,

k. ID, Page 4, Footnote 5, "According to the agency, it planned to propose Richards' removal. File Tab 11. That does not, however, render her retirement involuntary. It is well settled that an unpleasant choice between disciplinary action and retirement does not alone render a retirement involuntary. Absent a showing that the agency knew or believed that the discipline could not be maintained, or that an arguable basis for the discipline did not exist, the fact that the agency suspended Richards will not render her decision to retire involuntary. See Schultz"), **Compare**,

l. ID P.4 Fn 3,, 5, Fn 5, Fn 6, P, 6, Fn 7.Richards was suspended from duty for the eight months preceding her retirement, and thus not susceptible to any workplace

abuse by the agency during that period." [Since [Richards] received no income during that period her options were limited ...unpleasantness; **Compare**,

"Richards does not make an non frivolous claim the agency failed to provide her with the procedural protections required under 5 U.S.C. § 7513, when indefinitely suspending her. Her only procedural allegation was that the agency violated Executive Order No. 12968, Access to Classified Information" by allowing Daniel G. Mehney to propose her suspension and Major General Thompson to decide it], does not support an actionable claim; **Compare**,

ID P 4,5, Fn 5, 6, 7, Richards failed to allege the agency violated any of the seven procedures referenced in Executive order 12968; [S]nice Richards received no income during that period her options were limited .....unpleasantness; **Compare**,

i. September 22, 2004 affidavit, Tab P (40), Pg.115, and App Argument,

ii. "The army was not an appropriate authority to investigate this matter, where as here, the agency through its high-level proxies is charged with illegal discrimination. See Table of Contents faxed to AJ Manrose and the Agency Representative, during the February 2005 conference call, citing security regulations Tab V (b)App. Statement of Material Facts, ¶ 1, September 22, 2004 Aff, Tab P (40), Pg 115, citing DODD 5220.6,.

ID. Page 3, FN2, According to the agency, the CCF determined Richards' "pathological gambling "in partial remission" was a manifestation of defects in judgment, reliability, and stability. **Compare**,

The CCF also based its decision on a doctor's opinion Richards had "dysthemia disorder in remission." Appeal File, Tab 11. **Compare**,

DODD 5200.6, Guideline I, Emotional, Mental, and Personality Disorders, E2.A9.1.1. "A credentialed

mental health professional (e.g., clinical psychologist or psychiatrist), employed by, acceptable to, or approved by the Government, should be utilized in evaluating potentially disqualifying and mitigating information fully and properly, and particularly for consultation with the individual's mental health care provider to evaluate whether an individual has a condition or illness that may indicate a defect in judgment, reliability, or stability.
[A license is a presumption of competence subject to challenge. If a credentialed mental health professional fails to evaluate information fully and properly and particularly for consultation with the individual's mental health care provider the mental health professional has established incompetence.
[The CFR uses the word "competent," e.g. "Diagnosis by competent medical authority... determining if the individual has a condition or treatment that may indicate a defect in judgment reliability or stability].]

j. [Richards] failed to allege the agency violated any of the seven procedures referenced in Executive order 12968; **Compare**,

i. Army Medical Command mailed Benedek's Report to Richards mid December, 2004. . Pg? ¶s?, Ex?). (Id. TACOM Regulation, Ex?)

k. ID, Page 4, Footnote 3, Richards was suspended from duty for the eight months preceding her retirement, and thus not susceptible to any workplace abuse by the agency during that period. **Compare**,

i. **AD (c)** Proxies, attorney agents, and proxies expert witness psychiatrists' unclean hands and or misconduct through devious, deceitful, and coercive tactics committed fraud on Richards and the court)

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ii. **AD (d)** Intentional infliction of emotional and physical distress

I. ID, FN 6,[Richards alleges], deciding official General Ross Thompson abused his discretion by failing to request a waiver(mistaken belief that no regulation existed that would limit the deciding authority's_(CG, Thompson), discretion not to request a waiver, which precludes Richards' continued access to classified information during the investigation). **Compare**,

i. But for the fact the Army's proxy, with the power of the enterprise behind him, literally rather than figuratively,_was moving the train, two road blocks might have stopped the train,

(1) CG Thompson's obligation to withdraw from the case if he knew of circumstances which might affect his fairness, impartiality and objectivity,, and

(2), the information he was reviewing must be significant new derogatory information not previously adjudicated.".See,

CFR §154.7(b)_(1) "Whenever derogatory information relating to the criteria and policy set forth in §154.7(a) and Appendix H of this part is developed, or otherwise becomes available to any DoD element, it shall be referred by the most expeditious means to the commander or the security officer of the organization to which the individual is assigned for duty. The commander or security officer shall review the information in terms of its security significance and completeness. If further information is needed to confirm or disprove the allegations, additional investigation should be requested. Referral of derogatory information to the commander or security officer shall in no way affect or limit the responsibility of the central adjudication facility_(lower personnel in the Army hierarchy) to continue to process the individual for denial or revocation of clearance or access to classified information, in accordance with §154.56(b), if such

action is warranted and supportable by the criteria and policy contained in §154.7(a) and Appendix H._(1). CFR §154.7(b)., **"The commander or head of the organization shall determine whether, on the basis of all facts available upon receipt of the initial derogatory information, it is in the interests of national security to continue subject's security status unchanged, or to take interim action to suspend subject's access to classified information or assignment to sensitive duties (or other duties requiring a trustworthiness determination),** If information exists, which raises **serious** questions as to the individual's ability to protect classified information or execute sensitive duties (or other duties requiring a trustworthiness determination) until a final determination is made by the appropriate authority designated in appendix F to this part. Id,

[In a reinvestigation, 'serious' questions cannot be based on significant derogatory information previously adjudicated]. The commander, as the 'Requester, "determines whether the "new" information is derogatory enough for referral for investigation.

3 Lower courts overlooked and failed to carefully examine the status of the participants / actors, decision-makers in the illegal adverse acts, indisputably agency 'proxies,' whose actions are directly imputed to the agency (*Faragher*), failed to apply applicable Supreme Court precedent; misconstrued the nature of a hostile and abusive environment, one unlawful employment practice, a continuing violation but for the agency's failure to correct even though Richards was away from work during the suspension, and the agency through its proxies can and did subject Richards to abuse while she was suspended.

In *Jensen v Hamilton,* Jensen, like Richards, suffered a major depressive episode, Jensen alleged that the Postal Service subjected her to a hostile work environment and failed to take adequate measures to ensure that she could work in an environment free of co-worker sexual harassment. The Second Circuit has recognized that sexual harassment can be a continuing violation even though the employee is not working. See *Cornwell v. Robinson,* 23F.3d 694 (2d Cir. 1994). The Postal Service violated Title VII by failing to take appropriate corrective action in response to Jensen's allegations of co-worker harassment. The Court found that she timely initiated contact with an EEO Counselor because the matter alleged to be discriminatory is the adequacy of the Postal Service's response, not Jensen's co-worker's underlying behavior. "Further, the Court decided that her claims of discrimination may extend beyond her last day of work to the time when Jensen was on leave and the Postal Service failed to address her concerns. Harassment can be a continuing violation even though the employee is not working. Id. Cornwell. Compare,

e,

The AJ's adoption of the agency representative's intentionally skewed misrepresentation of material facts and law, led to failure to carefully examine the agency's violation of a number of security procedural regulations, wherein bias played a significant role. See Richards' affirmative defenses (ADs) including 'Abuse of process, and supporting evidence of misrepresentation, unclean hands, violation of security regulations APP¶4; .Initial Decision (ID), Pg 5.

DODD 5200.6, Definitions (e) "Employee" means a person, detailed or assigned to, an agency, including an expert or consultant to an agency....; personal services contractor; or any other category of person who acts for or on behalf

of an agency as determined by the appropriate agency head." (AMC four star, CG Thompson's supervisor and rater, and attorney agents ,AMC Command Counsel, Kathryn Szymanski(named participant), Assistant US Attorneys, and the OTJAG attorneys, Schmidt and Krause, assigned to assist the US attorneys for a purpose, which conflicts with a fair and impartial security investigation, and Mr. Buonocore, who was in a position of potential for undue influence, if he wants a SES and fails to please Szymanski (See Richards' issues of coercion and misrepresentation and supporting evidence of repudiation, settlement agreement,(self-contained documents, with a Table of Contents,, designated for Tab MC (43), at TAB, R (1). The psychiatrist, Dr Benedek, and her partner, Dr. Charles Clark, hired by the AUSAs to defend in Richards' federal court discrimination case, and the government selected evaluator, psychiatrist, Dr. Forman hired to evaluate Richards, are "employees" in this matter, and therefore, bound to follow the security regulations.

The above regulation foresees the possibility for withdrawal from a case. "The Director DIS shall establish appropriate alternative means whereby information with potentially serious security significance can be reported other than through DoD command ... Such access shall include utilization of the DoD Inspector General "hotline" to receive such reports for appropriate follow-up by DIS. DoD Components ...will assist DIS in publicizing the availability of appropriate reporting channels. Additionally, DoD Components will augment the system when and where necessary. Heads of DoD Components will be notified immediately to take action if appropriate.

"

Employee" and "reinvestigation regulations mandating that there be no reinvestigation, unless there is significant, new, and derogatory information

CCF's findings resulted from a 'string' of violated security procedures, had no basis in fact or law, and relied on Dr. Forman's 2004 report, which was a conclusory and baseless

and forbidden 'second bite at the apple,' Moreover, it was not Dr. Forman's independently arrived at opinion. The AJ's misinterpretation of CFR §154.10's 'restrictions on investigators,' at (c) (6), led to a failure to identify Forman's violations. As an employee, and a personnel security determination authority, Dr. Forman was obligated to comply with executive orders and implementing regulations. He violated directives applicable to him, and his violations resulted in harmful error.

security regulations, which apply to the medical exams, EO, § 3.2 (a), "Eligibility determinations for access to classified information shall be based on information concerning the applicant or employee that is acquired through the investigation conducted pursuant to this order, or otherwise available to security officials, by failing to understand that " otherwise available to security officials," when read together with CFR §154.19 (a), Reinvestigation, "DOD policy prohibits unauthorized and unnecessary investigations, and with EO§ 3.2 (c), "Nothing in this order shall prohibit an agency from utilizing any lawful investigative procedure in addition to the investigative requirements set forth in this order, to resolve issues that may arise during the course of a background investigation or reinvestigation," and CFR §154.10, C (5) Refrain from using, under any circumstances, covert or surreptitious investigative methods, means information lawfully obtained.

The CCF failed to explain away the reports of Drs. Thompson and Welch.. These reports were not from an unreliable source. They were solicited June 17 and 18, 2004. Then after the CCF decision to revoke October 2004, a few weeks after Richards received the notice from the TACOM security officer stating

that that Richards could at her own expense submit an evaluation of a mental health professional of her choice. Id not previously adjudicated"), indicating that the employee may not satisfy the standards in section 3.1 of this order, an employee ...as determined personally by the agency head or deputy agency head, or have an existing access eligibility readjudicated, so long as the employee has a need for access to classified information. Thus, the AJ failed to carefully examine the record for security regulation violations, and supporting evidence, and the resulting harmful errors, which led to the 2004 decision

The district court abused its discretion, by misconstruing the nature of a continuing violation, such as a hostile work environment, by finding Appellant failed to timely initiate contact with an EEO Counselor, June 7, 1999, when Judge Taylor decided Appellant failed to exhaust administrative remedies. Judge Taylor accepted the AUSA's argument that 'Morgan' requires a discrete act within the limitation period. She failed to view the totality of the circumstances, all acts and all evidence supporting one unlawful employment practice, a hostile and abusive environment.

Richards] failed to set forth the elements of a prima facie case ecause " not enough was said about her sex... no external evidence ows the acts were based on her sex, The district court relied on the JSA's false representations in oral argument and found Richards' led to exhaust administrative remedies by misconstruing the ature of a hostile environment, one employment practice, a ntinuing violation, by, finding Richards failed to timely contact an O Counselor, June 7, 1999, because she failed to allege a screte act within the 45 days. (SJHT 3, page 7-22)."She (Richard) ould have had one act fall within the 4[5] day period, one act of scrimination, or hostile work environment, or retaliation **all** within the day period, preceding the filing of her EEO complaint, and that act ould have been related to other instances of the same pattern of rassment....and none is really alleged. " (Pet. App. 29). The district urt misconstrued the nature of a continuing violation, such as a stile work environment, by finding Appellant failed to timely initiate ntact with an EEO Counselor, June 7, 1999, when Judge Taylor ecided Appellant failed to exhaust administrative remedies. Judge ylor accepted the AUSA's argument that '*Morgan*' requires a screte act within the limitation period. She committed legal error, by ling to view the totality of the circumstances, all acts and all idence supporting one unlawful employment practice. Richards' stile and abusive environment. Contrary to the district court's atement, Richards alleged a number of acts that were part of the stile environment that continued through the informal process, hich ended September 19, 2004, to the present but for the agency's fusal to correct. The district court misconstrued the nature of a ntinuing violation, such as a hostile work environment, by finding ppellant failed to timely initiate contact with an EEO Counselor, June 1999, when Judge Taylor decided Appellant failed to exhaust dministrative remedies. Judge Taylor accepted the AUSA's gument that '*Morgan*' requires a discrete act within the limitation eriod. She committed legal error, by failing to view the totality of the rcumstances, all acts and all evidence supporting one unlawful mployment practice. Richards' hostile and abusive environment.

ichards did not allege , as the court stated that Beauchamp's uestion as to whether he had anything to do with her ill health was ostile May 6, 1999, the day she left on long term sick leave, during a ne and one half hour discussion, she did engage in protected ctivity 'again' protesting his continuing failure to correct her major sues, which she described to him as illegal discrimination. The district ourt accepted the AUSA's argument that Richards was "rehashing d acts" and that did not count. The Supreme Court directed courts view allegations of hostile work environment as "a single unlawful mployment practice." Only the smallest portion of that "practice" eeds to occur within the limitations period for the claim to be timely.

> "She (Appellant) should have had one act fall within the 4[5] day period, one act of discrimination, or hostile work environment, or retaliation all within the 45 day period, preceding the filing of her EEO complaint, and that act should have been related to other instances of the same pattern of harassment....and none is really alleged."

Contrary to her statement, Richards' alleged a number of acts that were part of the hostile environment that continued through the informal process, which ended September 19, 2004, to the present but for the agency's refusal to correct. She did not allege that General Beauchamp's question as to whether he had anything to

do with her ill health as hostile on May 6, 1999, the day she left on long term sick leave, during a one and one half hour discussion. She did engage in protected activity 'again' protesting his continuing failure to correct her major issues, which she described to him as illegal discrimination. The district court accepted the AUSA's argument that Richards was "rehashing old acts" and that did not count. The Supreme Court directed courts to view allegations of hostile work environment as "a single unlawful employment practice." Only the smallest portion of that "practice" needs to occur within the limitations period for the claim to be timely. *National Rail Road v Morgan,* 122 S. Ct. 2061 (2002)

x. REASONS FOR GRANTING THE WRIT

1. EXCEPTIONAL, EXTRAORDINARY, UNIQUE, AND COMPELLING CIRCUMSTANCES EXIST TO WARRANT THE WRIT.

No court system can function without safeguards against actions that interfere with its administration of justice. One of those safeguards is the Court's supervisory power over the lower courts. The more the Court fails to exercise this power the higher the risk of the lower courts resorting to their own devices. Another safeguard is the Court's

equitable power. There are exceptional, extraordinary, unique, and compelling reasons for the Court to grant the writ. The egregious actions of the agency through its proxies, investigators, attorney agents, shock the conscience. The Court must invoke its equitable power to prevent an egregious injustice and the lower courts from continuing to act as abettors of iniquity. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944) .14, 15-17, 21.

The lower courts have so far departed from the accepted and usual course of proceedings" as to call for the Court's supervisory power to prevent the lower courts from becoming abettors of iniquity and to send a message to government attorneys that the Court will not tolerate fraud / misconduct that their client in this matter is the Department of the Army and not the individuals Richards named as participants and their duty on behalf of the client is to uphold the integrity of the system, seek truth and justice; not winning the 'game.'

The Court of Appeals' Decisions Conflicts with **Rule 60(b), and Prior Decisions of this Court and Other Courts of Appeals 13**

I. To prevent the lower courts from becoming abettors of iniquity.

II. The Sixth Circuit's judgment must be found invalid and the means to arrive at that judgment so far departs from the accepted and usual course of judicial proceedings as to call for the exercise of this court's supervisory powers.

III. To send a strong reminder to government attorneys that their goal is to uphold the integrity of the system, seek truth and justice; not winning the 'game' by playing 'dirty.'

IV. The Court of Appeals' Decisions conflicts with Rule 60(b), and prior decisions of this Court and other courts of appeal. 13

V.

VI. This Court Should Provide Petitioner a Remedy for the Government's Fraud . . .

Writs will aid this Court's appellate jurisdiction. It a compelling opportunity for the Court to exercise its supervisory duty

I. It is a compelling opportunity to clarify Morgan, to clarify harassment,

II. It is a compelling opportunity to hit the ground running to reach the ears of those at the top level of public and

private sector employment, where coercive power often runs rampant.

Exceptional circumstances exist to warrant the Writs 6

Writs will aid this Court's 5
appellate jurisdiction

I. Richards can (1) challenge actions made in the security investigative process by those identified as participants, and those who are defending them, in her federal court case. Not all claims arising from security clearance revocations violate separation of powers or involve political questions. Since Egan, the Supreme Court and several courts of appeals have held the federal courts have jurisdiction to review constitutional claims arising from the clearance revocation process. *Webster v. Doe,* 486 U.S. 592, 602 n.7; 603- 04(1988); *Dorfmont v. Brown,* 913 F.2d 1399, 1402 (9th Cir. 1990); Jamil v. Secretary, Dept. Of Defense, 910 F.2d 1203, 1209 (4th Cir. 1990); *Dubbs. V. C.I.A.,* 866 F.2d 1114, 1120 (9th Cir. 1989); *National Fed'n of Fed. Employees v. Greenberg,* 983 F.2d 286, 289-90 (D.C.Cir. 1993). The courts also have power to review whether an agency followed its own regulations and procedures during the revocation process. *Service v.*

Dulles, 354 U.S. 363 (1957); *Sampson v. Murray*, 415 U.S. 61 (1974); *Doe v. Casey*, 796 F.2d1508 (D.C. Cir. 1986), aff'd in part and rev'd in part, *Hill v. Department of Air Force*, 844 F.2d 1407, 1412 (10th Cir. 1988); *Drumheller v. Department of Army*, 49 F.3d 1566, 1570-73 (Fed. Cir. 1995). *Dubbs v. C.I.A.*, 866 F.2d 1114, 1121 n.9.

II. The Court must find that when the party is the United States acting through its agents, DODOCI, DOJ, the distinction between client and attorney actions become meaningless, All adverse actions must be examined together as they are inextricably entwined, pieces of one hostile environment. Those actions encompassed discriminatory and retaliatory disparate decisions and harassment culminating in Richards' serious illnesses, suspension, the agency's repudiation of a partial settlement agreement, revocation of Richards' security clearance, and involuntary retirement.

has not been, but should be, settled" by the Supreme Court; and
conflicts among the lower courts
issues that recur frequently and consume substantial judicial
resources, as well as lower court decisions that involve enormous financial liabilities.
good
"vehicles" for resolving the issue presented, *i.e*

1. The case **conflicts with decisions of the Supreme Court,** other appeals courts, the decision conflicts with

i. Reasons for Granting the Writ:

Compare ID, page 4. See Affirmative Defense (AD), (i) Denial of Richards' minimum due process rights in the investigation of Richards' security clearance by violation of security regulations and executive order, and acting in bad faith. App, ¶4, V-I. failed to apply legal precedent specifically applicable to participant proxies, misunderstood that this case is directly against the agency; misconstrued the nature of a hostile and abusive environment, one unlawful employment practice, a continuing violation but for the agency's failure to correct even though Richards was away from work during the suspension, and the agency through its proxies can and did subject Richards to abuse while she was suspended.

The Court must revisit Egan or distinguish this case from Egan, a politically motivated decision, which did not involve charges of discrimination directly by the agency through its proxies in the

security clearance process. This case establishes the courts must not and need not step aside "in the interest of national security." The courts presence is vital to the interest of national security." The risk that top level proxies in the private and public sectors will trigger the coercive power of the enterprise to protect Proxies, who have subjected themselves to high risk of criminal prosecution by making multiple material false statements in testimony, defy statute and regulation, reward subordinates, who support illegal acts by using the security investigative process to constructively 'murder' those, who do not support them is an ever present danger in this society. The instant case is distinguished from Egan, wherein the Supreme Court did not speak to circumstances wherein the agency, through its high-level proxies, whose adverse actions are automatically imputed to the agency (Faragher) knowingly participates in the illegal actions, and exerts command

influence to remove a security clearance from one of its own, in order to rid itself of a high level proxy, whose duties expressly demonstrate a purpose to ensure the integrity of the system, and who performs that duty for the purpose intended until working conditions were so intolerable that a reasonable person would have felt compelled to resign. 65 USPQ 133, 138 (1945).

dequate relief cannot be obtained anywhere else 7

2. The Sixth Circuit failed to, nor could it, make the requisite 41(b) findings: failure to cooperate due to willfulness, bad faith, or fault; adversary was prejudiced by dilatory conduct; party was warned failure to cooperate could lead to dismissal; and less drastic sanctions were imposed or considered *Regional Refuse Sys. Inc. V. Inland Reclamation Co.,* 842 f.2d 150, 153-55 (6th cir. 1988) (length of time alone is not the test of diligence). Prior notice or the lack, thereof, is a key consideration, when determining whether in the absence of notice that dismissal is contemplated a court should impose a penalty short of dismissal unless the derelict party has engaged in `bad faith or contumacious conduct.' *Harries v. Callwood,* 844 F.2d 1254, 1256. 6th cir (1988). In Richards' December 21, 2007 motion for enlargement of time she presented the above explanations

for the delay in requesting revival of the appeal, which justify the court's exercise of its discretion to grant Richards relief from judgment under Fed. R. Civ. P. 60(b)(1). Moreover, Richards delayed her flight to San Antonio and attempted to meet the January 26, 2007 date. January 30, 2007 she notified the court she was in Texas for surgery, Kinko's 'messed up.' She requested another extension. No response.

Richards Certifies Petition For Rehearing Was Timely. The Sixth Circuit Gave Richards' Twenty-Four Days Rather Than Forty-Five, When U.S. Is a Party To File A Petition For Rehearing En Banc

The Sixth Circuit knew or should have known it committed further harmful legal / indisputably gross factual error by failing to immediately serve a notice of entry of judgment to Richards' new address per FRAP 45 (c), and failing to extend the time to file a petition for rehearing en banc to April 20, 2007, to meet that requirement per FRAP 40. "In a civil case, if the United States or its officer or agency is a party, the time within which any party may seek rehearing is 45 days after entry of judgment, unless an order shortens **or extends the time.**" The Sixth Circuit served the judgment docketed February 15, 2007, March 6, 2007 (postmark). The docket is missing the date of service of notice of judgment. Frap 45 (c)... "[C]lerk must **immediately** serve a notice of entry... must note the date of

service on the docket." This gave Richards twenty -four rather than the required forty-five days to prepare a petition for rehearing, when the U.S. is a party. An envelope postmarked March 6, 2007 with a judgment enclosed was received March 9, 2007, twenty-two days after the clerk entered the judgment on the docket (February 15, 2007). The circuit clerk mistakenly believed Richards failed to give notice of address change and explained that the judgment marked received March 3, 2007, was returned to the court on that date after being sent to Richards' old address. Richards, however, properly notified the court of her address and telephone number change in the cover letter to the motion served overnight federal express, December 21, 2006, and filed December 29, 20 06. The cover letter states at ¶1, "Note change of address and telephone number." The new address information is also listed in the motion's caption and following Richards' signature. If Richards was late, the length of delay was one day rather than two. Richards arranged for a 7: 00 am flight, April 2, 2007. There was no seat for her. Through a computer error her ticket did not registered. She drove to Cincinnati, an unfamiliar place. The clerk's office was inaccessible. April 2, 2007 was the 'baseball opening day. The roads were blocked. Cars were moving at snails pace. Richards ended up lost on the far side of town. FRAP 26(a) (3), "Include the last day of the period unless... or — if the act to be done is filing a paper in court — a day on which the weather, or other conditions make the clerk's office

inaccessible. The Sixth Circuit failed to take account of all relevant circumstances surrounding Richards' submissions, ,"[non-]danger of prejudice to the [nonmovant]; length of the delay [overnight]; potential impact on judicial proceedings; reason for delay, including whether it was within the reasonable control of the movant; and whether the movant acted in good faith." *Pioneer Inv. Servs. Co. V. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993). Interpreting the plain meaning of the phrase "excusable neglect," the court concluded, "Congress plainly contemplated that the courts would be permitted, [when] appropriate, to accept late filings caused by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond the party's control." *id. a*t 388.

Richards Reasonably Believed The Sixth Circuit Accepted The Petition For Rehearing. Richards properly notified the court of a new address, and telephone number. The December 21, 2006 motion's cover letter, states at ¶1, "Note change of address and telephone number." The changes are also found in the caption, and signature block of 'Motion to Void Richards' Brief, Reset Time for a New Submission Sixty Days After the Date of the Court's Order.' The order rejecting the petition for rehearing en banc and six copies of appendix to the brief (twelve volumes)) as untimely was filed forty –six days after the clerk docketed the petition (April 4,

2007). The Sixth Circuit knew what Richards would never have known but for a June 4, 2007, telephone call to the Deputy Clerk. The court believed Richards failed in her obligation to give notice of address change, and the judgment was marked received; March 3, 2007, because it was returned to the court on that date, after being sent to Richards' old address. The court's failure to review Richards' motions lead to this error. In the interim Richards submitted affidavits and supplemental pleading in support of the petition (overnight federal express), April 20, 2007, entered on docket April 23, 2007; May 20, 2007, docketed with third submission, May 25, 2007 on May 29, 2007, and noted as rejected for filing by the May 24, 2007 Order finding the timely petition 'untimely.'

Decision Was A Fed. R. Civ. P. 41(B) Dismissal with Prejudice For Lack Of Prosecution in Disguise

4. The Sixth Circuit committed harmful legal error by failing to review and respond to Richards' December 21, 2006, timely motions for enlargement of time to submit a new appeal brief and appendix, and dismissed the case for lack of prosecution in disguise. Contrary to its case law, the Sixth Circuit abused its discretion by, according to the case manager, finding three pieces of paper somewhere designating them

an appendix, decided the summary judgment appeal based on district court SJH transcripts. February 15, 2007, despite the FRAP 30 (f) option to consider the appeal **on the original record** without an appendix, "The court may, either by rule for all cases or classes of cases or by order in a particular case, dispense with the appendix, or permit an appeal to proceed on the original record with any copies of the record, or relevant parts, that the court may order the parties to file." Richards established the elements of a prima facie case, and the reasons given by the agency are illegitimate. Richards' 245 page SJH affidavit, if considered with cited exhibits, demonstrate Richards' indisputably proved the case.

The Sixth Circuit's failure to respond to the December 21, 2007 motions, wherein Richards requested an enlargement of time, precluded the Sixth Circuit taking any action that amounted to dismissal of the case without considering Richards' motion. See FRAP 26 practice note, Benefit of Timely Extension Request. "Unless the court has previously ordered there will be no further extensions, an appeal will not be dismissed for failure to file appellant's brief, if appellant's motion to extend the time for filing was filed and served at least 7 days before the due date for the brief, but the motion has not been acted on by the due date.

In those motions Richards explained life events that intervened and precluded her from reviving the appeal:

illnesses, which physicians believe resulted from and / or were exacerbated by the agency's actions: major depression, March 1999; on going exacerbation of fibromayalgia, osteoarthritis; interstitial lung disease, chronic bacterial bronchitis and sinusitis, chronic fatigue; high blood pressure, and torn rotator cuff ; loss of consciousness episodes, 2004, sleep apnea / upper airways resistance syndrome; periodontitis 2004-2006; suspect mass in breast November 2005; shingles three times, 2005; radial osteonecrosis of jaw (death of bone due to a lack of blood supply from high dose of radiation therapy years earlier (parotid gland cancer). daily hyperbaric oxygen treatments, September --December, 2006; U of Texas Hospital, San Antonio, nine hour surgery, left hip, upper and lower jaws, and sinuses, October 2006, January- February 10, 2007, preparation for second stage surgery; June 14, 2007 four hour surgery. August 20, 2007, EMS transported Richards from the airport to hospital; diagnosis, vascular artery blockages. After a week hospital stay, she spent another week at Mayo Clinic, Rochester, Minnesota, She returned to Michigan, September 14, 2007. Richards has been without teeth since the October 2006 surgery. Further surgery is scheduled November / December. She has been diagnosed with cataracts in both eyes. The lens on the right eye is completely covered. Surgery on the right eye is October 21, 2007. A second surgery on the left eye will be scheduled shortly , thereafter.

7. There are compelling reasons for this case to be heard. It is a prime example of abuse of coercive power 'run rampant,' attorneys' overzealous commitment of fraud on courts; judges failing to do homework; and appeals courts clearing its dockets of pro se litigants in any way possible. The impact reaches all private and public employment sectors__ every household. The case is an excellent vehicle for clarifying Morgan, which continues to confuse lower courts; and revisiting Egan, which did not address when an agency through its proxies uses a security investigation to retaliate against protected protests, bringing to light violated agency security clearance procedural regulations based on executive orders, which have the force and effect of a statute, already in place, and intended to protect an employee from discrimination in the process__ Particularly applicable, when proxies are named participants in the discrimination and also named deciding official in a security clearance investigation as in this case. See violated security clearance procedural regulations,

8. The Sixth Circuit's affirmation of the district court's grant of summary judgment to defendant by filing a per curium opinion, February 15, 2007, in reliance on the SJH transcripts and the district court's (DC's) grossly harmful and indisputable factual and legal error in adopting the AUSA's misconstrued Supreme Court precedent and grossly misrepresented parsed material facts as true, rather than doing its homework, shocks the conscience. The SJH

transcript on its face establishes the district court with reckless disregard failed to review the evidence submitted, had minimal, if any, knowledge of indisputable material facts, before the hearing date, adopted the AUSA's gross misrepresentation of material facts, and erroneously misconstrued the law. The Sixth Circuit failed in its' duty to consider all evidence favoring the nonmoving party that was not impeached (in this case indisputably no evidence was impeached) by finding, "[Richards] claims in the aggregate (which the AUSA misrepresented as ten 'acts,' when sixty are closer to the mark), suggest no more than that she was quick to assert "harassment" or gender discrimination, when a workplace decision did not go exactly as she desired. The AUSAs played a dirty game crossed the line, and committed fraud on the court, a court, which the AUSA described to Richards and her attorney as a "lazy court." See Addendum, at A); and Richards' violated terms of employment at B, and in Appendix, ¶ 5, page(s) 3-25.

9. The Sixth Circuit knew or should have known it committed harmful legal and factual error by choosing to rely on the district court's (DC's) adoption of the AUSA's gross misrepresentation of material facts in the oral argument SJHTs, and misconstrued Supreme Court precedent as true by finding, [Richards] "failed to set forth the elements of a prima facie case because there is no external evidence to show the acts were based on her sex, not enough was said about her sex." (*Harris*); "The reasons given for the adverse actions

sounded legitimate," and there cannot be a legitimate reason, when Proxies made false statements, when addressing all areas complained. See Comparison Evidence Id. Moreover, the court found no harassment, no pretext, no retaliation, when direct evidence establishes the court erred. Id. There cannot be a legitimate reason when the adverse acts violated all regulations listed at 'B.'

10. The Sixth Circuit erred by failing to consider that the agency's top leaders, general officers (GOs) and the federal executive branch's top managers, civilian members of the Senior Executive Corp, SESs, members of the TACOM Board of Directors (BODs), 'Proxies,' are the participants in the illegal discrimination; failing to apply Supreme Court precedent, when analyzing facts for direct evidence of discriminatory / retaliatory motive: disparate decisions, and harassment, continuing violations 1996-present; failing to examine decision-**makers,** Proxies (two and three star GOs, a SES, and two "bird" Colonels) combined stereotypical, disparate and illegal decisions and harassing acts / remarks, which violated Richards' express terms of employment, and 'false, inconsistent, contradictory testimony of material facts, weigh probative value, and apply the finding to all "acts." 1996 to the present, one continuing violation' to this day (*Morgan*), but for refusal to correct. (*Faragher*); and adopting the DC's misconception of what constitutes harassment based on sex, and what factors increase or decrease the

severity of workplace harassment. Nothing needs to be said about Richards' sex. Harassment is not limited to acts of sexual desire, but rather is a broad term, which "encompasses all forms of conduct that unreasonably interfere with an individual's work performance, or creates an intimidating, hostile, or offensive working environment. *Shepherd v. Slater Steels Corp.*, 168 F.3d 998, 1008(7th Cir. 1999) (quoting *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 80(1998)). Whether the alleged harassment occurred because of the sex of the complainant depends on a finding that a complainant was "'exposed to disadvantageous terms or conditions of employment to which members of the other sex [were] not exposed." *Harris, Morgan, Suders, Oncale, and Meritor.*

11. The decision makers and those involved in the decisions repetitively and indisputably committed perjury. Even if the decision maker had authority to make the decisions, which they did not, disadvantaging a member of a protected class, when pretext (dishonesty) is established, suffices to show discriminatory motive and invidious discrimination. A jury is entitled to treat a party's dishonesty about a material fact as evidence of culpability. *Reeves v. Sanderson Plumbing Prods.*, Inc., 530 U.S. 133 (2000)) at 147, 154. No pretext plus is required. See comparison testimony/ establishing AUSA's representations as false. Id. Appendix.

12.

13. December 21, 2006, Richards filed motions in response to a Sixth Circuit 'note,' received December 15, 2006, stating the Sixth Circuit would hear the case on the "briefs' with whatever it had, January 26, 2007.

14. Richards owed the Sixth Circuit a new brief and appendix. The Sixth Circuit placed the appeal in abeyance, September, 2005, after Richards filed a timely notice of appeal, formal brief, and reply to Defendant's response, and failed to realize until she read Defendant's reply that the reason she could not cite to the docket or address all issues was the district court's failure to docket nine volumes of exhibits, meticulously indexed, and 90 single exhibits, incorporated into Richards' Summary Judgment Declaration (RDecl). The case manager mistakenly directed Richards to limit her formal brief to 30 pages. Per the court's direction, Richards drafted a note requesting the appeal be placed in abeyance. The intent was for Richards to persuade the district court to properly docket Richards' documents, and submit a new brief and appendix (a joint appendix was waived). There was no reinstatement suspense. The Sixth Circuit's failure to respond to the December 21, 2007 motions, wherein Richards requested an enlargement

of time, precluded the Sixth Circuit taking any action that amounted to dismissal of the case without considering Richards' motion. See FRAP 26 practice note, Benefit of Timely Extension Request. "Unless the court has previously ordered there will be no further extensions, an appeal will not be dismissed for failure to file appellant's brief, if appellant's motion to extend the time for filing was filed and served at least 7 days before the due date for the brief, but the motion has not been acted on by the due date.

In those motions Richards explained life events that intervened and precluded her from reviving the appeal: illnesses, which physicians believe resulted from and / or were exacerbated by the agency's actions: major depression, March 1999; on going exacerbation of fibromayalgia, osteoarthritis; interstitial lung disease, chronic bacterial bronchitis and sinusitis, chronic fatigue; high blood pressure, and torn rotator cuff ; loss of consciousness episodes, 2004, sleep apnea / upper airways resistance syndrome; periodontitis 2004-2006; suspect mass in breast November 2005; shingles three times, 2005; radial osteonecrosis of jaw (death of bone due to a lack of blood supply from high dose of radiation therapy years earlier (parotid gland cancer). daily hyperbaric oxygen treatments, September --December, 2006; U of Texas Hospital, San Antonio, nine hour surgery, left hip, upper and lower jaws, and sinuses, October 2006, January- February 10, 2007, preparation for

second stage surgery; June 14, 2007 four hour surgery. August 20, 2007, EMS transported Richards from the airport to hospital; diagnosis, vascular artery blockages. After a week hospital stay, she spent another week at Mayo Clinic, Rochester, Minnesota, She returned to Michigan, September 14, 2007. Richards has been without teeth since the October 2006 surgery. Further surgery is scheduled November / December. She has been diagnosed with cataracts in both eyes. The lens on the right eye is completely covered. Surgery on the right eye is October 21, 2007. A second surgery on the left eye will be scheduled shortly, thereafter.

Decision Was A Fed. R. Civ. P. 41(B) Dismissal with Prejudice For Lack Of Prosecution in Disguise

15. The Sixth Circuit committed harmful legal error by failing to review and respond to Richards' December 21, 2006, timely motions for enlargement of time to submit a new appeal brief and appendix, and dismissed the case for lack of prosecution in disguise. Contrary to its case law, the Sixth Circuit abused its discretion by, according to the case manager, finding three pieces of paper somewhere designating them an appendix, decided the summary judgment appeal based on district court SJH transcripts. February 15, 2007, despite the FRAP 30 (f) option to consider the appeal **on the original record** without an appendix, "The court may, either by rule for

all cases or classes of cases or by order in a particular case, dispense with the appendix, or permit an appeal to proceed on the original record with any copies of the record, or relevant parts, that the court may order the parties to file."

16. The Sixth Circuit failed to, nor could it, make the requisite 41(b) findings: failure to cooperate due to willfulness, bad faith, or fault; adversary was prejudiced by dilatory conduct; party was warned failure to cooperate could lead to dismissal; and less drastic sanctions were imposed or considered *Regional Refuse Sys. Inc. V. Inland Reclamation Co.,* 842 f.2d 150, 153-55 (6th cir. 1988) (length of time alone is not the test of diligence). Prior notice or the lack, thereof, is a key consideration, when determining whether in the absence of notice that dismissal is contemplated a court should impose a penalty short of dismissal unless the derelict party has engaged in `bad faith or contumacious conduct.' *Harries v. Callwood*, 844 F.2d 1254, 1256. 6th cir (1988). In Richards' December 21, 2007 motion for enlargement of time she presented

the above explanations for the delay in requesting revival of the appeal, which justify the court's exercise of its discretion to grant Richards relief from judgment under Fed. R. Civ. P. 60(b) (1). Moreover, Richards delayed her flight to San Antonio and attempted to meet the January 26, 2007 date. January 30, 2007 she notified the court she was in Texas for

surgery, Kinko's 'messed up.' She requested another extension. No response.

Richards Certifies Petition For Rehearing Was Timely. The Sixth Circuit Gave Richards' Twenty-Four Days Rather Than Forty-Five, When U.S. Is a Party To File A Petition For Rehearing En Banc

17. The Sixth Circuit knew or should have known it committed further harmful legal / indisputably gross factual error by failing to immediately serve a notice of entry of judgment to Richards' new address per FRAP 45 (c), and failing to extend the time to file a petition for rehearing en banc to April 20, 2007, to meet that requirement per FRAP 40. "In a civil case, if the United States or its officer or agency is a party, the time within which any party may seek rehearing is 45 days after entry of judgment, unless an order shortens **or extends the time."** The Sixth Circuit served the judgment docketed February 15, 2007, March 6, 2007 (postmark). The docket is missing the date of service of notice of judgment. Frap 45 (c)... "[C]lerk must **immediately** serve a notice of entry... must note the date of service on the docket." This gave Richards twenty -four rather than the required forty-five days to prepare a petition for rehearing, when the U.S. is a party. An envelope postmarked March 6, 2007 with a judgment enclosed was received March 9, 2007,

twenty-two days after the clerk entered the judgment on the docket (February 15, 2007). The circuit clerk mistakenly believed Richards failed to give notice of address change and explained that the judgment marked received March 3, 2007, was returned to the court on that date after being sent to Richards' old address. Richards, however, properly notified the court of her address and telephone number change in the cover letter to the motion served overnight federal express, December 21, 2006, and filed December 29, 20 06. The cover letter states at ¶1, "Note change of address and telephone number." The new address information is also listed in the motion's caption and following Richards' signature. If Richards was late, the length of delay was one day rather than two. Richards arranged for a 7: 00 am flight, April 2, 2007. There was no seat for her. Through a computer error her ticket did not registered. She drove to Cincinnati, an unfamiliar place. The clerk's office was inaccessible. April 2, 2007 was the 'baseball opening day. The roads were blocked. Cars were moving at snails pace. Richards ended up lost on the far side of town. FRAP 26(a) (3), "Include the last day of the period unless... or — if the act to be done is filing a paper in court — a day on which the weather, or other conditions make the clerk's office inaccessible. The Sixth Circuit failed to take account of all relevant circumstances surrounding Richards' submissions, ,"[non-]danger of prejudice to

the [nonmovant]; length of the delay [overnight]; potential impact on judicial proceedings; reason for delay, including whether it was within the reasonable control of the movant; and whether the movant acted in good faith." *Pioneer Inv. Servs. Co. V. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993). Interpreting the plain meaning of the phrase "excusable neglect," the court concluded, "Congress plainly contemplated that the courts would be permitted, [when] appropriate to accept late filings caused by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond the party's control." *id. at* 388.

Richards Reasonably Believed The Sixth Circuit Accepted The Petition For Rehearing. Richards properly notified the court of a new address, and telephone number. The December 21, 2006 motion's cover letter, states at ¶1, "Note change of address and telephone number." The changes are also found in the caption, and signature block of 'Motion to Void Richards' Brief, Reset Time for a New Submission Sixty Days After the Date of the Court's Order.' The order rejecting the petition for rehearing en banc and six copies of appendix to the brief (twelve volumes)) as untimely was filed forty –six days after the clerk docketed the petition (April 4, 2007). The Sixth Circuit knew what Richards would

never have known but for a June 4, 2007, telephone call to the Deputy Clerk. The court believed Richards failed in her obligation to give notice of address change, and the judgment was marked received; March 3, 2007, because it was returned to the court on that date, after being sent to Richards' old address. The court's failure to review Richards' motions lead to this error. In the interim Richards submitted affidavits and supplemental pleading in support of the petition (overnight federal express), April 20, 2007, entered on docket April 23, 2007; May 20, 2007, docketed with third submission, May 25, 2007 on May 29, 2007, and noted as rejected for filing by the May 24, 2007 Order finding the timely petition 'untimely.'

18. The Sixth Circuit failed to respond to Richards' June 7, 2007, timely The Sixth Circuit failed to respond to Richards' June 7, 2007, timely motion for reconsideration addressing the new facts described above.. It is a prime example of abuse of coercive power 'run rampant,' attorneys' overzealous commitment of fraud on courts; judges failing to do homework; and appeals courts clearing its dockets of pro se litigants in any way possible. The impact reaches all private and public employment sectors__ every household. The case is an excellent vehicle for clarifying Morgan, which continues to confuse lower courts; and revisiting Egan, which did not address when an agency through its proxies uses a security investigation to retaliate against protected protests,

bringing to light violated agency security clearance procedural regulations based on executive orders, which have the force and effect of a statute, already in place, and intended to protect an employee from discrimination in the process__ Particularly applicable, when proxies are named participants in the discrimination and also named deciding official in a security clearance investigation as in this case. See violated security clearance procedural regulations,

19. The Sixth Circuit erred by adopting the DC's adoption of the AUSA's misconstrued nature of a continuing violation by ignoring all adverse acts beginning in 1996, including a number of the acts, which Richards also identified she could have labeled "the last act," (continuing violations into the 45 days and beyond (if one uses June 7, 1999) but for the agency, through its high level proxies failure to correct, which the DC failed to address. *Burlington Indus., Inc. v. Ellerth,* 524 U.S.742 (1998); *Faragher v. City of Boca Raton,* 524 U.S. 775 (1998); *McFarland v. Henderson,* 307 F.3d 402, 408(6th Cir. 2002); *Jensen v Hamilton* (8th Cir.2002). June 7, 1999, Richards was on long term sick leave with a major depressive and anxiety disorder, and a number

of physical health conditions resulting from the adverse actions complained

20. Richards established the elements of a prima facie case, and the reasons given by the agency are illegitimate. Richards' 245 page SJH affidavit, if considered with cited exhibits, demonstrate Richards' indisputably proved the case.

21.

The lower courts have so far departed from the accepted and usual course of proceedings as to require the Court's "supervisory power"— Proxies 'acts" are "official actions" of the enterprise. *Faragher v. City of Boca Raton*, 524 U.S. 775, 789 (1998). "Such official action is by statute clearly within the jurisdiction of the Board, and an aggrieved employee can appeal such an action to the Board for a determination as to whether the actions were proper. 5 U.S.C. § 7513(d) (2000). "A]n adverse action is an official action taken by a federal agency and imposed on an employee." *Garcia v. Department of Homeland Security* (Fed Cir. 2006) (did not involve an official adverse action).

The lower courts erred by failing to consider that the agency's top leaders, general officers (GOs) and the federal executive branch's top managers, civilian members of the Senior Executive Corp, SESs, members of the TACOM Board of Directors (BODs), 'Proxies,' are the participants in the illegal discrimination; failing to apply Supreme Court precedent, when analyzing facts for direct evidence of

discriminatory / retaliatory motive: disparate decisions, and harassment, continuing violations 1996-present; and failing to examine decision-**makers**, Proxies (two and three star GOs, a SES, and two "bird" Colonels) combined stereotypical, *disparate and illegal decisions and harassing acts / remarks, which violated Richards' express terms of employment, and 'false, inconsistent, contradictory testimony of material facts, weigh probative value, and apply* the finding to all "acts," 1996 to the present. one continuing violation' to this day *(Morgan)*, but for refusal to correct. *(Faragher)*; and adopting the DC's misconception of what constitutes harassment based on sex, and what factors increase or decrease the severity of workplace harassment. Nothing needs to be said about Richards' sex. Harassment is not limited to acts of sexual desire, but rather is a broad term, which "encompasses all forms of conduct that unreasonably interfere with an individual's work performance, or creates an intimidating, hostile, or offensive working environment. *Shepherd v. Slater Steels Corp.*, 168 F.3d 998, 1008(7th Cir. 1999) (quoting *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 80(1998)). Whether the alleged harassment occurred because of the sex of the complainant depends on a finding that a complainant was '"exposed to disadvantageous terms or conditions of employment to which members of the other sex [were] not exposed." *Harris, Morgan, Suders, Oncale, and Meritor.* The decision makers and those involved in the decisions repetitively and indisputably committed perjury. Even if the decision maker had authority to make the decisions, which they did not, disadvantaging a member of a protected class, when pretext (dishonesty) is established, suffices to show discriminatory motive and invidious discrimination. A jury is entitled to treat a party's dishonesty about a material fact as evidence of culpability. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133 (2000)) at 147, 154. No pretext plus is required. See

comparison testimony/ establishing AUSA's representations as false. Id. Appendix.

RELIEF REQUESTED

I maintain that since 1996 and continuing to the present, I have been subjected to an ongoing pattern and practice of discrimination and retaliation by Defendant, which has caused a continuing hostile work environment, and has resulted in a series of adverse tangible employment actions (TEA), because of my sex (female) and prior EEO activity in this case. I further maintain that the discrimination and reprisal I have endured has caused me serious equitable and compensatory damages, which include both pecuniary and non-pecuniary damages claims. I seek a ruling in my favor and an award of retroactive status quo ante equitable and injunctive relief, with all requisite back-pay, benefits, and interest; past pecuniary damages, $300,000 in compensatory damages. Agency will pay reasonable attorney fees and costs in accordance with requirements set out at Title 5 of the United States Code (5 U.S.C.), sections 7701(g), 1221(g), or 1214(g) and 5 C.F.R. § 1201.202

CONCLUSION

For all of the foregoing reasons and for the additional reasons set forth in the attached evidence, there exists no genuine issue of material fact and Richards is entitled to judgment in her favor as a matter of law. See FED. R. CIV. P. 56. Therefore, The Federal Circuit and Sixth Circuit judgments should be reversed, Summary Judgment granted to Richards and she should be awarded the relief requested.

Respectfully submitted,
Verlyn E. Richards
Petitioner

Appendix Part I.

A. **Opinions Below**

1. Federal Circuit May 11, 2007,Decision
2. Federal Circuit, August 3, 2007, Denial, Pet. for Rehearing

3. M.S.P.B. Denial PFR

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
DOCKET NUMBER CH075205-08 83-1-1
VERLYN E. RICHARDS,
Appellant,
V.
DEPARTMENT OF THE ARMY, DATE: May 12, 2006
Agency.
Verlyn E. Richards, Southfield, Michigan, pro se.
Vincent Buonocore, Fort Monmouth, New Jersey, for the agency.
BEFORE
Neil A. G. McPhie, Chairman
Mary M. Rose, Vice Chairman
Barbara J. Sapin, Member
FINAL ORDER
The appellant has filed a petition for review in this case asking us to reconsider the initial decision issued by the administrative judge. We grant petitions such as this one only when significant new evidence is presented to us that was not available for consideration earlier or when the administrative judge made an error interpreting a law or regulation. The regulation that establishes this standard of review is found in Title 5 of the Code of Federal Regulations, section 1201.115 (5 C.F.R. § 1201.115).

After fully considering the filings in this appeal, we conclude that there is no new, previously unavailable, evidence and that the administrative judge made no error in law or regulation that affects the outcome. 5 C.F.R. § 120 1.115(d).
.L3
FOR THE BOARD: _____ _____
Bently M. Roberts, Jr. / J
Clerk of the Board

4. M.S.P.B, AJ Initial Decision

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CENTRAL REGIONAL OFFICE
VERLYN E. RICHARDS, DOCKET NUMBER
Appellant, CH-075205-08834 I
V.
DEPARTMENT OF THE ARMY, DATE: January 6, 2006
Agency.
Verlyn E. Richards, Brighton, Michigan, pro Se.
Vincent Buonocore, Esquire, Fort Monmouth,
New Jersey, for the agency.
BEFORE
Nina Puglia
Administrative Judge
INITIAL DECISION
INTRODUCTION
The appellant was Chief Legal Counsel, SES-4, for the agency's Army Tank Automotive and Armaments Command Legal Office in Warren, Michigan. On August 18, 2004, the agency temporarily revoked her security clearance. Effective October 31, 2004, the agency suspended her indefinitely pending resolution of

her security clearance revocation. The appellant appealed her indefinite suspension to the Board on December 1, 2004) the appellant retired
The parties entered an enforceable settlement agreement of the indefinite suspension into the Board's record on December 19, 2005. See Docket No. CH-0752-05-0128-I-2.
2
Effective June 30, 2005. See Agency File, Tab 6(d). On September 9, 2005, she filed this appeal with the Board, alleging her retirement was involuntary and thus tantamount to a constructive removal. Although the appellant requested a hearing, she is not entitled to one because she failed to make a non-frivolous allegation that the Board has jurisdiction over her appeal. See Hardy v. Merit Systems Protection Board, 13 F.3d 1571, 1575 (Fed. Cir.), cert. denied, 512 U.S. 1235 (1994). The appeal is adjudicated on the written record.
The appeal is DISMISSED for lack of jurisdiction.
JURISDICTION
The Board's jurisdiction is not plenary; it is limited to those matters over which it has been given jurisdiction by law, rule, or regulation. Maddox v. Merit Systems Protection Board, 759 F.2d 9, 10 (Fed. Cir. 1985). An individual seeking Merit Systems Protection Board review of a personnel action must show, by a preponderance of the evidence, that the Board has jurisdiction over her appeal. 5 C.F.R. § 120 1.56(a) (2) (2005); see also Burns v. Department of Health & Human Services, 35 M.S.P.R. 213, 215 (1987), aff'd, 848 F.2d 1244 (Fed. Cir. 1988). The employee may appeal to the Board only those actions for which a right of appeal is granted by law, rule, or regulation. 5 U.S.C.A. § 770 1(a) (West 1996).

Although the appellant takes issue with many agency acts in connection with her employment, the material facts of this case are not in dispute. Her last position with the agency was Chief Counsel to. TACOM, the Army command responsible for acquisition and development of tanks and other fighting vehicles. That position required a security clearance. On August 18, 2004, the agency's Central Personnel Security Clearance Facility ("CFF") made a preliminary determination to revoke the appellant's security clearance. The agency indefinitely suspended the appellant effective October 31, 2004, pending the outcome of the CFF's final decision on her security clearance revocation. The appellant, having reached a "desperate financial state," retired effective June 30, 2005, to* obtain retirement benefits. Appeal File, Tab 5.

Absent evidence to the contrary, retirement is presumed to be a voluntary act beyond the Board's jurisdiction. See Covington v. Department of Health & Human Services, 750 F.2d 937, 941 (Fed. Cir. 1984); see also Talley v. Department of the Army, 50 M.S.P.R. 261, 263 (1991). An appellant may rebut the presumption her retirement was voluntary if she provides sufficient evidence to establish she retired due to coercion, duress, misinformation provided by the agency, or mental incompetence. Scharf v. Department of the Air Force, 710 F.2d 1572, 1574-75 (Fed. Cir. 1983); see also Barthel v. Department of the Army, 38 M.S.P.R. 245, 250-51 (1988). The common element in all cases of involuntary resignation is that factors have operated on the employee's decision- making process depriving her of freedom of choice. Scharf v. Department of the

Air Force, 710 F.2d 1572, 1574-75 (Fed. Cir. 1983); Koury v. Department of Defense, 84 M.S.P.R. 219, 225 (1999).

2 According to the agency, the CFF determined the appellant's "pathological gambling in partial remission" was a manifestation of defects in judgment, reliability, and stability. The CFF also based its decision on a doctor's opinion the appellant had "dysthymic disorder in remission." Appeal File, Tab 11.

4

The appellant does not allege the agency subjected her to duress3 or misinformation, or that she was mentally incompetent at the time of her retirenient.4 Instead, she alleges the agency coerced her retirement by improperly revoking her security clearance and indefinitely suspending her. Because the appellant received no income from the agency since her October 31, 2004 indefinite suspension, her options were indeed limited.5 that does not, however, render her decision to retire involuntary. It is well-settled that an unpleasant choice between disciplinary action and retirement does not alone render a retirement involuntary. Absent a showing that the agency knew or believed that discipline could not be sustained, or that an arguable basis for the discipline did not exist, the fact that the agency suspended the appellant will not render her retirement involuntary.

In a related appeal, the appellant complained about her treatment prior to her suspension, but did not raise allegations that rise to a specific claim of duress. The appellant was suspended from duty for the eight months preceding her retirement, and thus not susceptible to any

workplace abuse by the agency during that period.

In this appeal, she alleges General Beauchamp told Equal Employment Opportunity investigators he did not give her performance awards because she had difficulty working with people and misunderstood the nature of her position. She also alleges the agency subjected her to "constant abuse" and "false scenarios" that made her office look bad. Appeal File, Tab 12. She has articulated these claims more thoroughly elsewhere. The U.S. District Court for the Eastern District of Michigan granted the agency's Motion for Summary Judgment in the appellant's 1999 sex discrimination suit alleging agency officials subjected her to remarks such as "legal gal,""my girl attorney,""dear," and "young lady;" seated her in the back row at video conferences; denied her awards and supervisory opportunities; refused to "accept" her; rated her performance disparately low; failed to include her in meetings or allow her participation on TACOM's Performance Review Board; criticized her performance; and limited her hiring authority. See Docket No. CH-0752-05-0128-I-1: Agency File, Tabs 4(c) & (l).

The appellant states she was taking prescribed psychotropic medication for "major depression and anxiety disorder" at the time she filed her Board appeal. Appeal File, Tab 5. She represented herself during her appeal and has not alleged mental incompetence at any time.

According to the agency, the CFF subsequently rendered a decision to revoke the appellant's security clearance permanently and the agency planned to propose the appellant's removal. See

Appeal File, Tab 11. VC (5 decision to retire involuntary. See Schulz v. Department of the Navy, 810 F.2d 1133, 1136 (Fed. Cir. 1987).

An arguable basis for the appellant's indefinite suspension existed: the CFF's decision. An agency may indefinitely suspend an employee based on suspension of her security access, pending its investigation of her security clearance, where the agency believes that her retention in a duty status would be detrimental to government interests. See Jones v. Department of the Navy, 978 F.2d 1223 (Fed. Cir. 1992); Kriner v. Department of the Navy, 61 M.S.P.R. 526, 529 (1994).

The appellant argues that she should not have been suspended arid that the agency should have restored her security clearance based on evidence she provided.6 The Board, however, lacks the authority to review the merits of the agency's suspension of access to classified information. See Department of the Navy v. Egan, 484 U.S. 518 (1988); Drumheller v. Department of the Army, 49 F.3d 1566, 1571 (Fed. Cir. 1995); Hessen v. Department of State, 82 M.S.P.R. 489, 492 (1999), aff'd, 217 F.3d 1372 (Fed. Cir. 2000), cert. denied, 531 U.S. 1154 (2001).

Board review in security clearance matters is generally limited to determining whether a clearance is required for a particular position; whether the access to classified information was suspended, whether there was a vacant, non-sensitive position to which the agency could have reassigned appellant if it had- a policy, manifested by regulations, requiring such reassignment; and whether the agency provided the employee with the procedural protections required under 5 U.S.C.

§ 7513 when taking the suspension action. See King V.

¶ 6 In her indefinite suspension appeal, she alleged the agency violated the U.S. Constitution and discriminated against her; the CFF failed to consider her medical reports; deciding official General Ross Thompson abused his discretion by "failing to request a waiver" (presumably under 10 U.S.C.A. § 986 (d) (West Supp. 2005) ("Smith Amendment"); and both the proposing and deciding officials were improperly biased against her. See Docket No. CH-0752-05-0128-I-1: Appeal File, Tab I. Alston, 75 F.3d 657 (Fed. Cir. 1996); Drumheller, 49 F.3d at 1570; Hesse, 82 M.S.P.R. at 492. In suspending an employee indefinitely pending completion of a security clearance investigation, an agency must afford the employee due process in the form of written notice of the charges prompting the investigation, an explanation of the agency's evidence, and an opportunity to respond; the Board's inquiry goes no further. Kriner, 61 M.S.P.R. at 532-33.

The appellant has not shown the agency wrongfully suspended her. She indicates that by August 9, 2005, she was unable to work at all, due at least in part to emotional reasons. Appeal File, Tab 7.

She alleges the agency unfairly "targeted" her illness and financial vulnerability. She further alleges the agency caused her illnesses by its "constant abuse." She has never claimed her position did not require a clearance; that the agency restored her clearance, or that there was a vacant, nonsensitive position to which the agency could have, and should have, reassigned

her. Moreover, she does not make a nonfrivolous claim the agency failed to provide her with the procedural protections required fewer than 5 U.S.C. § 7513 when indefinitely suspending her. Her only procedural allegation, that the agency violated Executive Order No. 12,968 ("Access to Classified Information") by allowing Daniel G. Mehney to propose her suspension and Major General Thompson to decide it, does not support an actionable claim.7

The appellant alleges the agency subjected her to harmful procedural error by allowing participants in her civil suit to propose and decide her suspension. The appellant named neither Mr. Mehney nor General Thompson as defendants in her civil lawsuit, which was dismissed on the agency's Motion for Summary Judgment. See Docket No. CH0752 -05-0128-1-1: Agency File, Tab 4(1).

Executive Order 12,968, signed into law by President Clinton, expressly does not create any "substantive or procedural" right that is enforceable against federal agencies. Exec. Order No. 12,968, 60 Fed. Reg. 40,245, 40,254 (Aug. 2, 1995).

Moreover, the appellant does not allege the agency violated any of the procedures referenced in Executive Order 12,968: (1) comprehensive and detailed a written explanation for the agency's conclusion; (2) satisfaction of relevant Freedom of Information .and Privacy Act requests within 30 days; (3) information of the limited right to representation and to review documents; (4) provision of reasonable opportunity for written reply and requesting review; (5) identification of reviewer

and provided of written notice of and reasons for review results, with appeal rights;

(6) Appellant has not made a nonfrivolous allegation that the agency knew its indefinite suspension was unsustainable, or that no arguable basis existed for it. I therefore find the appellant has made a nonfrivolous claim of coercion. See Kriner, 61 M.S.P.R. at 532-33; Schulz, 810 F.2d at 1136.

Because the appellant has not shown she retired as a result of coercion, duress, agency misrepresentation, or mental incompetence, I find she has not shown she was deprived of free choice in deciding whether to continue in her employment status with the agency. Accordingly, I conclude the Board lacks jurisdiction to review her retirement. See *Heining v General Services Administration*, 68 M.S.P.R. 513, 519 (1995).

TIMELINESS

Because I have determined the Board lacks jurisdiction over this appeal, I need not address the agency's contention the appeal is untimely filed.

DISCRIMINATION AND RETALIATION

The appellant alleges the agency discriminated against her on the basis of her sex and retaliated against her on the basis of protected activity. In deciding the jurisdictional issue posed by an alleged involuntary retirement, the Board will address evidence of discrimination and retaliation only insofar as it relates to the issue of voluntariness and not whether the evidence would establish discrimination or reprisal under Title VII. See Markon v. Department of State, 7

M.S.P.R. 574, 578 (1996). The appellant did not establish Board jurisdiction over her resignation; thus, the Board lacks pendent jurisdiction over her
8
Discrimination and retaliation claims.8 See Synan v. Merit Systems Protection Board, 765 F.2d 1099, 1100-01 (Fed. Cir. 1985); see also Dixon v. United States Postal Service, 64 M.S.P.R. 445, 452 (1994), aff'd sub nom. Scorcia v. United
States Postal Service, 77 F.3d 503 (Fed. Cir. 1996) (Table).
DECISION
'The appeal is DISMISSED.
FOR THE BOARD:
S/_____
Nina Puglia
Administrative Judge

5. District Court Order
U.S. District Court, Eastern District of Michigan, South Division
GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
On June 17, 2004, Defendant filed a motion for summary judgment. On July 20, 2004, Plaintiff filed a cross motion for summary judgment. On October 18, pursuant to notice a hearing was held, where the attorneys for the parties presented oral argument in support of their respective motions and in opposition to their opponent's motions. For the reasons set forth by the court on the record on October 18, 2004, it is hereby ordered that Defendant's motion for summary judgment is hereby granted and Plaintiff's motion for summary judgment is hereby denied. It is

further hereby ordered that summary judgment is hereby entered in favor of the defendant.

Issued on October 26, 2004.

_____S/_____

Anna Diggs Taylor, District Judge

6. Sixth Circuit, February 15, 2007,Decision

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
Case No. 05-1091
VERLYN RICHARDS, Plaintiff-Appellant.
V.
DEPARTMENT OF THE ARMY,
Defendant-Appellee.)
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NOT RECOMMENDED FOR FULL-TEXT PUBLICATION
0 L 05-1091
FEB 20 2007
UNITED STATES COURT OF APPEALS
Clerk's OFFICE FOR THE SIXTH CIRCUIT
FILED
FEB 1 5, 2007
LEONARD GREEN, Clerk
APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN
Before: MERRITT, DAUGHTREY, and GRIFFIN, Circuit Judges.
PER CURIAM.

The plaintiff, Verlyn Richards, is a former civilian employee of the United States Army who brought

this Title VII action against the Department of the Army, claiming that she had been subjected to discrimination on the basis of her gender and to retaliation for engaging in protected activity. The district court granted summary judgment to the defendant, finding that the plaintiff had failed to exhaust her administrative remedies properly.

In the alternative, the district court also held that Richards had not established a prima facie case on either claim or that she had failed to prove that the Army's explanations for its actions in regard to her employment were pretextual. On appeal, we conclude that the district court's decision on the merits was legally correct and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Verlyn Richards graduated from Jaw school in 1980 and worked as a lawyer in private practice for one year before being hired as a civilian attorney advisor in August 1981 for the Army Tank-Automotive & Armaments Command (TACOM). TACOM, as the name suggests, handles all "tank automotive acquisitions and development" for the Army Materiel Command, which in turn is responsible for the research, development, and acquisition of "materiel for the soldiers of the United States Army and for the Department of Defense and our allies."

Over the years, Richards steadily advanced through the counsel ranks at TACOM and eventually applied for the position of chief command counsel, a position once held by Al Dawes, the plaintiff's first supervisor upon being hired at TACOM. When Dawes retired early in the tenure of TACOM Commanding General Edward Andrews, reviewed the applications filed for the

position and selected the plaintiff as the "most qualified" from a list of candidates, a list that included Al Kalt, the individual who served as interim counsel in the position for more than a year.

Richards accepted the job in January 1996 and began work as TACOM's first female civilian chief counsel in April of that year. Richards continued to serve in that senior executive service position throughout the remainder of Andrews's command, through the command of General Roy Beauchamp, which lasted from July 1997 to August 1999, and after General John Caldwell succeeded Beauchamp.

Richards felt, however, that she was treated differently and less favorably as a female chief counsel than a male chief counsel would have been treated by her career- military bosses. Consequently, the plaintiff initiated administrative proceedings on June 7, 1999, by contacting the Equal Employment Opportunity office for the Army Materiel Command and alleging that she was the victim of gender discrimination. Following a hearing before a Department of Defense investigator, Richards also requested an evidentiary hearing before an administrative law judge. Prior to any such hearing,. however, the plaintiff withdrew her request, and before a final agency decision could be entered, Richards filed this complaint in federal district court on October 29, 2002.

Eventually, both Richards and the Secretary of the Army filed motions for summary judgment, contending that no genuine issues of material fact existed in the dispute. The district judge agreed, and after argument by counsel for the parties,

granted summary judgment to the defendant. In doing so, the court ruled from the bench;

First of all, the plaintiff apparently failed to exhaust timely exhaust her administrative remedies on either of the claims that's on [sic] being presented to the Court.

In addition, the Court finds that she would not be able to establish a prima fade case, a hostile work environment, or a retaliatory conduct, and summary judgment is granted because of the failure to set forth the elements of [a] prima facie case on plaintiff's part.

None of the acts complained of— even if she had met the time limits — none of the acts complained of appear to have been based on sex or to be adverse treatment because of her sex.
Finally, if she had made a prima fade case of either retaliation or hostile conduct or hostile environment or simple discrimination, the legitimate nondiscriminatory reasons given by the Army, in this case, cannot be called pretext for discrimination. The legitimate nondiscriminatory reasons appear clearly on the undisputed facts presented to the Court to be true, legitimate nondiscriminatory reasons.
From that ruling, Richards now appeals.
DISCUSSION
We review de novo. The grant of summary judgment by a district court. See Ciminillo v. Streicher, 434 F.3d 461, 464(6th Cir. 2006). is proper where "the. pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine

issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." F. R. Civ. P. 56(c). A genuine issue of material fact exists only when, assuming the truth of the non-moving party's evidence and construing all inferences from that evidence in the light most favorable to the non-moving party, there is sufficient evidence for a trier of fact to find for that party. A non-moving party cannot withstand summary judgment, however, by introduction of a "mere scintilla" of evidence in its favor. See Criminally, 434 F.3d at 464.

A. Exhaustion of Administrative Requirements

"In permitting federal employees to sue under Title VII [of the Civil Rights Act of 1964, 42 U.S.C. §2000e 2000e-17], Congress conditioned the government's waiver of sovereign immunity upon a plaintiffs satisfaction of 'rigorous administrative exhaustion requirements and time limitations.'" McFarland v. Henderson, 307 F.3d 402,406(6th Cir. 2002) (quoting Brown v. Gen. Servs. Admin., 425 U.S. 820, 833(1976)). See also Dixon v. Ashcroft, 392 F.3d 212, 217 (6th Cir. 2004) ("Undoubtedly, federal employees who allege that they have been victims of discrimination must exhaust their administrative remedies."). Relevant regulations relating to public sector employment require that aggrieved persons believing they have been discriminated against on the basis of sex "must initiate contact with a Counselor within 45 days of the date of the matter alleged to be discriminatory. . . ." 29 C.F.R. § 1614.105(a)(1). Because Title VII's exhaustion requirements are not jurisdictional, however, "they are subject to waiver, estoppel, and equitable tolling." McFarland, 307 F.3d at 406 (citing Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 393 (1982)).

In this matter, the plaintiff alleges numerous acts and decisions by Army personnel that, she claims, were motivated solely by a desire to discriminate against women. She does not, however, contend that all or even most of those specified acts occurred within the 45-day period prior to her June 7, 1999, contact with an Equal Employment Opportunity counselor. Instead, Richards argues on appeal "that the Army's failure to take remedial action by maintaining a pervasive policy of discrimination against Appel[ant] resulted in overlapping, continuing retaliatory violations, which accelerated with her continued protective activity."

Title VII indeed does not separate individual acts that are part of the hostile environment claim from the whole for the purposes of timely filing and liability. And the statute does not contain a requirement that the employee file a charge prior to [45] days 'after' the single unlawful practice 'occurred." Nat'l R.R. Passenger Corp. v. Morgan, 536 U.S. 101, 118 (2002). Nevertheless, "[i]n order for the charge to be timely, the employee must file a charge within [45] days of any act that is part of the hostile work environment." Id. (emphasis added).

As argued by the defendant Secretary of the Army in his appellate brief, to hold otherwise and ratify Richards' proposition that mere maintenance of a hostile work environment without continuing acts of discrimination could lead to absurd results. As noted by the defendant, "If such a 'string along' theory were viable, a plaintiff could describe a discrete act, such as a demotion, as a hostile work environment claim by demanding it be rescinded

every month for 12 months, and characterizing the persistent refusals as evidence of a hostile work environment."

The plaintiff does, however, contend that two qualifying acts occurred within the applicable 45-day period that ran from April 23, 1999, until the contact with the Equal Employment Opportunity counselor on June 7, 1999. She submits that one such act involved a conversation she had with General Beauchamp in early May 1999, shortly before Richards began long-term sick leave. According to the plaintiff's deposition testimony, during that conversation Beauchamp "asked me if there was anything that he had done that was related to my sickness, and I told him that yes, there was; and I went over [three alleged acts of discrimination, all of which occurred more than 45 days prior to June 7, 1999)." However, mere recitation by the plaintiff of acts occurring outside the relevant time frame does not magically bring those acts within the applicable filing period. Richards cannot, therefore, rely upon this May 4 conversation to save her Title Vii cause of action.
The plaintiff also directs our attention to a telephone call that she received in mid- May 1999 while on sick leave, informing her that her request for two additional attorney positions for the TACOM legal staff had been denied by Douglas Newberry, TACOM's Chief of Staff between 1995 and September2001. The defendant insists that this "act" does not make Richards' June 7 contact with the counselor timely because the "alleged non-filling of two legal positions (was not] in any way motivated by gender or retaliation animus." But, the fact that the plaintiff's assertion cannot overcome the

evidentiary hurdle placed in its path does not mean that Richards cannot legitimately argue that Newberry's decision had a discriminatory or retaliatory underpinning that served to create a hostile work environment at TACOM. At least arguably, therefore, the plaintiff has identified an alleged act of discrimination or retaliation that occurred within the 45-day period prior to her initial contact with the administrative process.

B. Hostile Work Environment Claim

Under Title VII, an employer may not discriminate "against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's. . . sex . . ." 42 U.S.C. § 2000e-2(a)(1). Discrimination in violation of this statutory prohibition may be found when a plaintiff establishes that "the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." *Harris v. Forklift Sys. Inc* 510 U.S. 17, 21 (1993). To establish such a hostile work environment claim, a plaintiff thus must demonstrate that:

(1) She was a member of a protected class;

(2) She was subject to unwelcome sexual harassment;

(3) The harassment was based on her sex;

(4) The harassment created a hostile work environment; (and]

(5) [The employer did not take] reasonable care to prevent and correct any sexually harassing behavior.

Williams v. Gen. Motors Corp., 187 F.3d 553, 560-61 (6th Cir. 1999).

Without question, Richards, as a female, is a member of a class of individuals protected by the provisions of Title VII. The relevant questions in this appeal are whether the plaintiff was harassed at all by the defendant, whether any such harassment was based on sex, and whether it was sufficient to create a hostile work environment. In resolving these issues, we must judge the conduct in question "by both an objective and a subjective standard: The conduct must be severe or pervasive enough to create an environment that a reasonable person would find hostile or abusive, and the victim must subjectively regard that environment as abusive." Black v. Zaring Homes, Inc, 104 F.3d 822, 826 (6th Cir. 1997). Among the factors to be considered [in determining whether an environment can be considered sufficiently severe to justify a finding of a hostile work environment are 'the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.'" *Clark v. United Parcel Sew.*3 Inc., 400 F.3d 341, 351 (6th Cir. 2005) (quoting *Harris*, 510 U.S. at 23). In sum, "the plaintiff's allegations must depict conduct that could be construed as pervasive enough to alter the conditions of her employment and to create an abusive situation." Id. However, "(i]solated incidents, unless extremely serious, will not amount to discriminatory changes in the terms or conditions of employment." *Bowman v. Shawnee State Univ.*, 220 F.3d 456, 463 (6th Cir. 2000).In applying these principles to the facts presented by the plaintiff, it becomes clear that Richards has failed to satisfy her evidentiary burden

of establishing a hostile work environment at TACOM.

First, the incidents or patterns of conduct highlighted by the plaintiff cannot be considered harassment at all. Second, even if considered harassment, they were not based on Richards's gender and, most obviously, were not sufficiently egregious to create a hostile working environment. Moreover, considered taken together. as they must be, the plaintiff's claims suggest no more than that she was quick to assert "harassment" or "gender discrimination" when a workplace decision simply did not go exactly as she desired are not sufficient to establish liability, 400 F3d at 352 (citing *Faragher V. City of Boca Raton.* 524 U.S. 775, 788(1998)).

Richards also claims gender discrimination in the decisions of Generals Andrews and Beauchamp to have her sit behind them at video teleconferences with other Army commands. The testimony in the record is uncontroverted that these teleconferences were conducted in a small room with seating for only seven individuals around the table and 13 additional seats in a second row that did not appear on the video camera. Moreover, both generals testified without contradiction that the seating arrangements were not based on gender or rank, but rather upon the need to have certain advisors nearby during the meetings. Indeed, an examination of the seating charts at teleconferences both before and after the plaintiff eventually secured a seat on-camera shows that the commanding generals were always flanked at the table by their chiefs-of-staff and deputy commanders. Moreover, when Richards was seated iii the second row of seats, she would have had much easier access to the commanding

general to offer legal advice than when seated farther away at the table. Richards' other assertions of discriminatory acts are even less substantial than the allegations discussed above. Clearly, none of the actions alleged by the plaintiff implicate??????

'These additional complaints include: not being allowed initially to serve as the ultimate reviewer of the work of off-site legal staff (who were instead rated by the commanding generals supervising their venous areas of command and who did not desire to relinquish that supervisory control); Not being allowed to speak with attorneys stationed in Anniston, Alabama, without the permission of the depot commander. Greg Potts, who did not want the plaintiff to impose new duties upon his legal staff; not being granted funding for additional legal positions at TACOM during a period of drastic downsizing in the entire Army; not given a acket of slides

-environment can be considered sufficiently severe to justify a finding of a hostile work environment are 'the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.'" Clark v. United Parcel Sew.3 Inc., 400 F.3d 341, 351 (6th Cir. 2005) (quoting *Harris*, 510 U.S. at 23). In sum, "the plaintiffs allegations must depict conduct that could be construed as pervasive enough to alter the conditions of her employment and to create an abusive situation." Id. However, "(i]solated incidents, unless extremely serious, will not amount

to discriminatory changes in the terms or conditions of employment." Bowman v. Shawnee State Univ., 220 F.3d 456, 463 (6th Cir. 2000).

In applying these principles to the facts presented by the plaintiff, it becomes clear that Richards has failed to satisfy her evidentiary burden of establishing a hostile work environment at TACOM. First, the incidents or patterns of conduct highlighted by the plaintiff cannot be considered harassment at all. Second, even if considered harassment, they were not based on Richards' gender and, most obviously, were not sufficiently egregious to create a hostile working environment. Moreover, considered in the aggregate. as they must be, the plaintift's claims suggest no more than that she was quick to assert "harassment" or "gender discrimination" when a workplace decision simply did not go exactly as she desired.

Richards first asserts gender discrimination as a result of TACOM Chief-of-Staff Patrick Kirby occasionally addressing the plaintiff as "dear" arid young lady," and General Andrews referring to her at various times as legal gal," "legal girl," "little legal gal, "little legal girl," "my girl attorney," "my gal attorney," or "my little legal eagle." Although plainly less than professional Kirby's comments can hardly be considered objectively demeaning, harassing, or abusive. Furthermore, Andrews admitted in deposition testimony:

"And I have a habit of saying "guys" and "gals." And I say, "my acquisition guy," my legal gal" And I said, I don't recall her saying that, but it would not be out of form for me to say that, because 1 would say, "my TARDEC guy" or "my legal gal" or my "TARDEC gal," which is a mannerism that I have used for a long time.

Andrews further testified that Richards never approached him about his use of the terms because, as he claimed, I would have stopped immediately if I thought that was bothering her." More disconcerting was hearsay testimony offered by Richards that, out of the presence of the plaintiff, Andrews once referred to bell curves on a chart as resembling "a pair of woman's tits" arid that the general spoke with other individuals "about women's body parts" in general, and Richards' body parts in particular. Such comments were clearly Improper and have no place in a professional work setting. Nevertheless, nothing in the record before us indicates that they were anything other than isolated examples of boorish behavior. As we noted in Clark, "Title VII was not meant to create a 'general civility code,' and the' sporadic use of abusive language, gender-related jokes, arid occasional teasing'

'Page 12 gender considerations or can singly be considered severe enough "to alter the conditions of her employment and to create an abusive situation." !ark, 400 F3d at 351. Pursuant to the teachings of Hams and its progeny, however, we are also instructed to examine hostile work environment allegations using a totality-of-the-circumstances See Harris , 510 U.S. at 23. Such an analytic framework must be construed to mean that even where individual instances of sexual harassment do not on their own create a hostile environment, the accumulated effect of such incidents may result in a Title VII violation." Williams, 187 F.3d at 563. Consequently, "courts must be mindful of the need to review the work environment as a whole, rather than focusing-single-mindedly on

individual acts of alleged hostility. Id. Even doing so in this case, however, the evidence adduced by the plaintiff cannot establish, the severe or pervasively abusive atmosphere necessary to support a finding of a hostile work environment. Furthermore, Richards cannot point to any evidence, other than her own suppositions, that would directly or indirectly establish a material dispute over whether the decisions of which she complains were caused by gender discrimination. Other than isolated comments regarding female body parts, every instance of alleged discrimination of slides at a meeting, due to a misunderstanding (although the plaintiff participated fully in the meeting and was allowed to share slides and materials with other meeting attendees) not receiving discretionary performance twice bonuses every year (even in years in which Richards also received substantial step increase in salary); not being granted a position on an internal performance review board after resigning from the board in a dispute over the directions given to panel members; not being allowed to consolidate her legal staff in renovated facilities that would have required expenditures of at least $400,000 at a time when no new construction was authorized due to lack of funds; and not being assigned as legal advisor on a major acquisition project headed by a Pentagon official who selected instead a deputy chief counsel with whom the project leader had worked previously and who had experience in sensitive and complicated electronics weapons systems acquisitions Cir 2000). Once the prima fade case is established, the burden of production then shifts to the employer who must articulate a legitimate, nondiscriminatory reason for its actions.

See Moms, 201 F.3d at 793. The plaintiff, who bears the burden of persuasion throughout the entire process, then must demonstrate that the proffered reason was not the true reason for the employment decision. (citations and internal quotation marks omitted).

The reasons articulated by the defendant in this matter for the actions and decisions to which the plaintiff objects were reasonable, legitimate, and not proven by Richards to be pretexts for invidious discrimination, or indeed anything other than acceptable rational es for typical business decisions. For example, the seating assignments for the video teleconferences about which the plaintiff complained were developed with an understanding that the commanding generals should be accompanied at the table by those individuals who assisted them in carrying out their leadership responsibilities. The decisions not to allow Richards the ultimate power to rate off-site attorneys were justified by the command leaders' desire to have input in the evaluations of the personnel under their direction. Determinations of staffing needs, bonus payments, and the desirability of new construction were driven in large measure by financial considerations In a time of downsizing and fiscal reductions. Furthermore, Richards was not denied meaningful access to relevant meetings and should not be heard to complain about not being placed on a performance review board when she asked not to participate on the body due to her disagreement with the mandate of the board. Finally, the designation of a particular attorney to assist in an acquisition project was influenced not by any retaliatory anirnus, but **Page**

13:, rather by a recognition of the counsel's expertise and by the project commander's familiarity with the lawyer. but was driven by such gender-neutral considerations as expediency, reluctance of military officers to relinquish control over subordinates, finances, or demonstrated superiority of other individuals in special circumstances. Because Richards has thus offered no indication that she was treated differently than male counterparts because of her gender, the district judge did not err in concluding that the plaintiff failed to establish a prima facie case of hostile work-environment gender discrimination. (Cir 2000).

Once the prima fade case is established, the burden of production then shifts to the employer who must articulate a legitimate, nondiscriminatory reason for its actions. See Morris, 201 F.3d at 793. "The plaintiff, who bears the burden of persuasion throughout the entire process, then must demonstrate that the proffered reason was not the true reason for the employment decision." Id. (citations and internal quotation marks omitted). The reasons articulated by the defendant in this matter for the actions and decisions to which the plaintiff objects were reasonable, legitimate, and not proven by Richards to be pretexts for invidious discrimination, or indeed anything other than acceptable rationales for typical business decisions. For example, the seating assignments for the video teleconferences about which the plaintiff complained were developed with an understanding that the commanding generals should be accompanied at the table by those individuals who assisted them in carrying out their leadership responsibilities. The decisions not to allow

Richards the ultimate power to rate off-site attorneys were justified by the command leaders' desire to have input in the evaluations of the personnel under their direction. Determinations of staffing needs, bonus payments, and the desirability of new construction were driven in large measure by financial considerations in a time of downsizing and fiscal reductions. Furthermore, Richards was not denied meaningful access to relevant meetings and should not be heard to complain about not being placed on a performance review board when she asked not to participate on the body due to her disagreement with the mandate of the board. Finally, the designation of a particular attorney to assist in an acquisition project was influenced not by any retaliatory animus,

C. Retaliation Claim

The plaintiff further contends that the perceived mistreatment that she received at the hands of the defendant was in retaliation for complaining to her superiors about the alleged gender discrimination. To prove a prima fade case of Title VII retaliation, a plaintiff must show that:
(1) she engaged in activity protected by Title Vii; (2) this exercise of protected rights was known to defendant; (3) defendant thereafter took adverse employment action against the plaintiff, or the plaintiff was subjected to severe or pervasive retaliatory harassment by a supervisor; and (4) there was a causal connection between the protected activity and the adverse employment action or harassment. Morris v. Oldham County Fiscal Cowl, 201 F3d 784, 792 (0th Cir. 2000) (emphasis in original removed).

The burden of establishing such a prima facie case is not, however, an onerous one and is relatively easily satisfied. See Nguyen v. City of Cleveland, 229 F.3d 569, Under such circumstances, the district court properly granted summary judgment to the defendant on Richards's retaliation claim as well.

III. CONCLUSION

For the reasons set out above, we AFFIRM the grant of summary judgment to the defendant, based on Richards's Inability to establish that any actions of which she complains contributed to the creation of a hostile work environment or could be considered retaliation for protected conduct.

1. Sixth Circuit May 24, Finding Richards' Petition for Rehearing En Banc Late

9. Violated SECURITY CLEARANCE REGULATIONS Boiler plate;

a) EOs 12968, § 7.2(e) This Executive order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

b) EO 13087, "Security policies designed to protect classified information must ensure consistent, cost effective, and efficient protection of our Nation's classified information, while providing fair and equitable treatment to those Americans upon

whom we rely to guard our national security. Art, 1. eligibility for access to classified information shall be granted only to employees who are United States citizens for whom an appropriate investigation has been completed... decisions are to be made by an appropriate government authority; there should be an appropriate investigation, and, "The United States Government does not discriminate on the basis of race, color, religion, sex, national origin, disability, or sexual orientation in granting access to classified information," are a directive to the agencies to protect an applicant against bias.

c) EO, § 3.2 (a), "Eligibility determinations for access to classified information shall be based on information concerning the applicant or employee that is acquired through the investigation conducted pursuant to this order, or otherwise available to security officials,

[Otherwise available to security officials," when read together with CFR §154.19 (a), Reinvestigation, "DOD policy prohibits unauthorized and unnecessary investigations, and with EO§ 3.2 (c), "Nothing in this order shall prohibit an agency from utilizing any lawful investigative procedure in addition to the investigative requirements set forth in this order, to resolve issues that may arise during the course of a background investigation or reinvestigation," and CFR §154.10, C (5) Refrain from using, under any circumstances, covert or surreptitious

investigative methods, means information lawfully obtained].

d) CFR §154.31 and Appendix E, Request Procedures, Definitions, (c) "Authorized investigative agency" means an agency authorized by law or regulation to conduct ... investigation of persons, who are proposed for access to classified information. Personnel security investigations may be requested and granted only by those authorities designated in CFR §154.31 and Appendix E Request Procedures, §A (a).

AUSAs' Contracted Medical Personal Are Employees

e) DODD 5200.6, Definitions (e)'Employee" ... a person, detailed or assigned to, an agency, including an expert or consultant to an agency....; personal services contractor; or any other category of person, who acts for or on behalf of an agency as determined by the appropriate agency head."

AUSAs, contracted medical personal were obligated to refrain from any involvement in a security investigation,

f) CFR §154.31(c) Appendix E Request Procedures, §A (a), *Authorized requesters and personnel security determination authorities*, per *'Restrictions on Investigators' at* 32 CFR §154.10, (C) (6) *shall* refrain from accepting any case in which the investigator knows of circumstances that might [not 'will' but 'might'] adversely affect his fairness,

impartiality, or objectivity. When conducting investigations under the provisions of this part. The Director shall establish appropriate alternative means whereby information with potentially serious security significance can be reported other than through DOD command ... Such access shall include utilization of the DOD Inspector "hotline" to receive such reports for appropriate follow-up by DIS. DOD Components ...will assist DIS in publicizing the availability of appropriate reporting channels. Additionally, DOD Components will augment the system when and where necessary. Heads of DOD Components will be notified immediately to take action, if appropriate.

g) DODD 5220.6, §4.1, "It is DOD policy that "All proceedings provided for by this Directive shall be conducted in a fair and impartial manner." DODD 5220.6, incorporates E.O. 10865 at.4.3. 'except as otherwise provided for by E.O. 10865,' which states, 'Eligibility shall be granted only to employees for whom an appropriate investigation has been completed, a discretionary security decision must be based on judgments by appropriately trained adjudicative personnel and expressly incorporates 10865 provision, "The United States Government does not discriminate on the basis of race, color, religion, sex, national origin, disability, or sexual orientation in granting access to classified information," at 3.1(c), which repeats § 3.1(b) the EO 12968 provision at § 3.2. (c), "Basis for Eligibility Approval, "All

employees shall be subject to investigation by an appropriate government authority. EO 12968 § 3.2 (a) and § 3.2 (a); Ad 5. "Authorized investigative agency, Ad 4; 5; authorized investigators, appropriate investigation, CFR § 154-155 CFR §154.31; Ad 6, alternative means whereby information with potentially serious security significance can be reported other than through DOD.

Reinvestigation

h) EO 13087, A. *L.* Ad, "To conserve investigative resources and to insure that personnel security investigations are limited to those... clearly authorized by DOD policies; organizations requesting investigations must assure that continuing command attention is given to the investigative request process. It is important that the provision of Executive Order 12356 requiring strict limitations on the dissemination of official information and material be closely adhered to...Investigations required determining eligibility for retention in DOD must not be requested in frequency or scope exceeding that provided for in this part. § (b). Special attention shall be given to eliminating unnecessary clearances and requests for personnel security investigations. EO 10865, 3(c), Reinvestigation intended to preclude preadjudicated information, when an investigation is a reinvestigation. Federal Personnel Manual, chapter 732, subchapter 1, paragraph 1–6b. §154.41(b) (1) (ii) and (2)

i) EO, 12968, § 3.2 (a), "Eligibility determinations for access to classified

information shall be based on information concerning the applicant or employee that is acquired through the investigation conducted pursuant to this order, or otherwise available to security officials. EO§ 3.2 (c), "Nothing in this order shall prohibit an agency from utilizing any lawful investigative procedure in addition to the investigative requirements set forth in this order, to resolve issues that may arise during the course of a background investigation or reinvestigation When conducting investigations under the provisions of this part, investigators shall: Investigate only cases or persons assigned within their official duties, (8), review and collect medical record information may be accomplished only by authorized investigative personnel."

CCF failed to interview Richards

j) EO 12968, § 3.2 (c), "Nothing in this order shall prohibit an agency from utilizing any lawful investigative procedure in addition to the investigative requirements set forth in this order, to resolve issues that may arise during the course of a background investigation or reinvestigation,"

Investigators shall: Investigate only cases or persons assigned within their official duties, (8), Review and collect medical record information may be accomplished only by authorized investigative personnel;" and See EO 13087, A. L., C2.5.4. Privacy Act Notification; Additional information required to make the necessary personnel security determination shall be obtained as

appropriate from knowledgeable personal sources, particularly subject's peers, and through checks of relevant records including school, employment, credit, medical, and law enforcement records. CFR §154.10, C (5) Refrain from using, under any circumstances, covert or surreptitious investigative methods.

k) C2.5.4. Privacy Act Notification. Whenever personal information is solicited from an individual preparatory to the initiation of a personnel security investigation, the individual must be informed of:

i. C2.5.4.1. the authority (statute or Executive Order that authorized Solicitation);

ii. C2.5.4.2. the principal purpose or purposes for which the information is to be used;

l) Section 2â Special investigative inquiry: A. A Special investigative inquiry is a personnel security investigation conducted to prove or disprove allegations relating to the criteria outlined in paragraph 2â - 200 of this regulation, except current criminal activities that have arisen concerning an individual upon whom a personnel security determination has been previously made and who, at the time of the allegation, holds a security clearance or otherwise occupies a position that requires a trustworthiness determination. Special investigative inquiries are scoped as necessary to address the specific matters requiring resolution in the case concerned and generally consist of record checks and/or interviews with

potentially knowledgeable persons. An SII may include an interview with the subject of the investigation when necessary to resolve conflicting information and/or to provide an opportunity to refute or mitigate adverse information. Personal interview Investigative experience over the years has demonstrated that, given normal circumstances, the subject of a personnel security investigation is the best source of accurate and relevant information concerning the matters under consideration. Further, restrictions imposed by the Privacy Act of 1974 (reference (m)) dictate that Federal investigative agencies collect information to the greatest extent practical-directly from the subject when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. Accordingly, personal interviews are an integral part of the DOD personnel security program and shall be conducted in accordance with the requirements set forth in the following paragraphs of this section.

m) C2.3.9.2. **Resolving Adverse Information**. A personal interview of the subject shall be conducted by a DIS agent (or, when authorized, by investigative personnel of other DOD investigative organizations designated in this Regulation to conduct personnel security investigations), when necessary, as part of each Special Investigative Inquiry, ... to resolve or clarify any information which may impugn the subject's moral character, threaten the subject's future federal employment, raise the

question of subject's security clearability, or be otherwise stigmatizing.

CG Thompson, AMC Command Counsel, Szymanski, AUSAs and OTJAG attorneys underhandedly triggered the reinvestigation. See **ADs,** P, ?

n) CFR §154.10, C (5) Refrain from using, under any circumstances, covert or surreptitious investigative methods.

o) C2.5.3. Collection of Investigative Data. To the greatest extent practicable, personal information relevant to personnel security determinations shall be obtained directly from the subject of a personnel security investigation. Such additional information required to make the necessary personnel security determination shall be obtained as appropriate from knowledgeable personal sources, particularly subject's peers, and through checks of relevant records including school, employment, credit, medical, and law enforcement records.

p) The ultimate determination of whether the granting or continuing of eligibility for a security clearance is clearly consistent with the interests of national security must be an overall common sense determination based upon careful consideration of the following:

Allegiance to the United States]
Foreign influence
Foreign preference
Sexual behavior
Personal conduct
Financial considerations
Alcohol consumption
Drug involvement

Emotional, mental, and personality disorders
Criminal conduct
Security violations
Outside activities
Misuse of Information Technology Systems

[Each of the foregoing should be evaluated in the context of the whole person. Although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or emotionally unstable behavior. However, notwithstanding the whole person concept, pursuit of further investigation may be terminated by an appropriate adjudicative agency in the face of reliable, significant, disqualifying, adverse information.]

q) DOD 5200.2-, National Industrial Security Program" ("NISPOM"), January 1987, 27 chapters 2, criteria for application of security standards, 2–200, P. 5. The meaning of "sufficiently derogatory information," needed to trigger a reinvestigation, which requires mandatory, not discretionary, application. Per section 2-203, national industrial security program operating manual ("NISPOM"), adopted 1993, pursuant to Executive Order 12829 CFR §154.19 (a), Reinvestigation, "DOD policy prohibits unauthorized and unnecessary investigations, and with EO§ 3.2 (c), "Nothing in this order shall prohibit an agency from utilizing any lawful investigative procedure in addition to the investigative requirements set forth in this order, to resolve issues that may arise during the

course of a background investigation or reinvestigation,"

§ 2-203. Previous grant of a personnel clearance must be honored anew without further investigation or adjudication "unless significant, new, derogatory, information that was not previously adjudicated becomes known to the granting agency." (EO 10865, §(c), see ISCR case no. 98-0320 (April 8, 1999),

r) 32 CFR §154.7(b) (1) *Referral for action.* Whenever derogatory information relating to the criteria and policy set forth in §154.7(a) and Appendix H of this part is developed, or otherwise becomes available to any DOD element, it shall be referred by the most expeditious means to the commander or the security officer of the organization to which the individual is assigned for duty. .The commander or security officer ... shall review the information in terms of its security significance and completeness. If further information is needed to confirm or disprove the allegations, additional investigation should be requested: The commander...shall insure that the parent component, (AMC Office of the Command Counsel (Szymanski)), of the individual concerned is informed promptly concerning the derogatory information developed and any actions taken or anticipated with respect thereto. ...However, derogatory information to the commander or security officer shall in no way affect or limit the responsibility of the central adjudication facility to continue to process the individual for denial or revocation of clearance or access to classified information, in accordance with §154.56(b), if such action is

warranted and supportable by the criteria and policy contained in §154.7(a) and Appendix H. (1). (Here, lower personnel in the Army hierarchy). "The commander or head of the organization shall determine , on the basis of all facts available upon receipt of the initial derogatory information, if it is in the interests of national security to continue subject's security status unchanged, or to take interim action to suspend subject's access to classified information or assignment to sensitive duties (or other duties requiring a trustworthiness determination), if information exists, which raises serious questions

> [In a reinvestigation, 'serious' questions must be based on significant new derogatory information not preadjudicated] as to the individual's ability to protect classified information or execute sensitive duties (or other duties requiring a trustworthiness determination) until a final determination is made by the appropriate authority designated in appendix f to this part. Id,

s) DODD 5220. 6, January 2, 1992, E2.A9 Guideline I, Emotional and Personality Disorders ... the concern is that some emotional, mental and personality disorders can cause significant deficit in an individual's psychological, social, and occupational functioning. The concern is that they may indicate a defect in judgment, reliability, or stability." E2.a9.1.1. A credentialed mental health professional (e.g., clinical psychologist or psychiatrist), employed by, acceptable to or approved by the Government, should be utilized

in evaluating potentially disqualifying and mitigating information fully and properly, and particularly for consultation with the individual's mental health care provider.

t) Conditions that could raise a security concern and may be disqualifying E2.A9.1.2.

i. E2.A9.1.2.1. An opinion by a credentialed mental health professional, licensed clinical psychologist, licensed social worker, or board-certified psychiatrist that the individual has a condition or treatment that may indicate a defect in judgment, reliability, or stability;

ii. E2.A9.1.2.2. Information that suggests that an individual has failed to follow appropriate medical advice relating to treatment of a condition, e.g. failure to take prescribed medication;

iii. E2.A9.1.2.3. A pattern of high-risk, irresponsible, aggressive, anti-social, or emotionally unstable behavior;

iv. E2.A9.1.2.4. Information that suggests that the individual's current behavior indicates a defect in his or her judgment or reliability.

u) **Conditions that could mitigate security concerns include:**

a) E2.A9.1.3. 2...3 No indication of a current problem;

b) E2A9.1.3.1Recent diagnosis by a credentialed mental health professional4 that an Individual's previous emotional, mental, or personality disorder is cured or in remission and has a low probability of recurrence or exacerbation;

c) E2. A9, 1.3.3 past emotional instability was a temporary condition (e.g., one caused by a death, illness, or marital breakup), the situation has been resolved, and the individual is no longer emotionally unstable.

v) TACOM -R, 600-5, SPHM June 3, 1997, Ch 14, Apx. D, 14-52, 14-13, 14-14. (medical exam (security), Tab c (13), .pg(s) 198-200, (1) [Richards] can, at her own expense, have an additional evaluation of her own choosing for evaluation for submission with the US Government Evaluation (to CCF, and not Forman, See reference in Forman's 2004 report.)] And (2), "Government psychiatrist handles the medical exam as well. A medical examination must be conducted prior to the psychiatric evaluation, See Paul Barnard, TACOM security officer's, June 3, 2004 memo to Richards informing her of this. Tab MC (5), Pg 7.

w) CFR §154.56 Procedures. (a). No final personnel security determination shall be made on a member of the Armed Forces, an employee of the Department of Defense, a consultant to the Department of Defense, or any other person affiliated with the Department of Defense without granting the individual concerned the procedural benefits set forth in paragraph (b) of this section when such determination results in an unfavorable administrative action (see §154.55(a)). Sec. 5.2. Review Proceedings for Denials or Revocations of Eligibility for Access. (a) Applicants and employees who are determined to not meet the standards for

access to classified information established in section 3.1 of this order shall be:

(1) Provided as comprehensive and detailed a written explanation of the basis for that conclusion as the national security interests of the United States and other applicable law permit;

(2) Provided within 30 days, upon request and to the extent the documents would be provided if requested under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act (3 U.S.C. 552a), as applicable, any documents, records, and reports upon which a denial or revocation is based;

(3) informed of their right to be represented by counsel or other representative at their own expense;

(4)to request any documents, records, and reports as described in section 5.2(a) (2) upon which a denial or revocation is based; and

(5) to request the entire investigative file, as permitted by the national security and other applicable law, which, if requested, shall be promptly provided prior to the time set for a written reply;

(6) provided a reasonable opportunity to reply in writing to, and to request a review of, the determination;

(7) Provided written notice of and reasons for the results of the review, the identity of the deciding authority, and written notice of the right to appeal;

x) DOD 5200.2-, January 1987, *186* APPENDIXES 13 P13.1.6. The PSAB will render a final written determination stating its rationale and notify the individual in writing (via the individual's employing organization) generally within 30 calendar days of receipt of the recommendation from DOHA. This decision will be final and will conclude the appeal process

10. **Agency Violated Terms, Benefits and Privileges of Employment / Regulations,**

1) Military Environment Conduct Regulations

i. Excerpts, The Army Officer's Guide, 49th addition," LTC E. Bonn, USA (Ret.); (Tab C (15) P. (s) (Rigidly proper conduct, a high level of respectful behavior accorded to those higher in the chain. "Taboos," "[W]herein civilians and military alike are expected to adhere. V- IV, 19, 22, P. 201, 23, P. 202).... Behavior every officer is trained to know, and recognize, V-II, at P. 201,

ii. UCMJ **punitive provisions,**

a) Article (Art) 133 Failure to behave as an officer and a gentleman; defaming an officer's uniform and official or social position... Avoid going over an officer's head, harsh remarks (gossip, slander, and harsh criticism). Vulgarity and profanity use by officers is apprehensible. P. 18, a senior officer addressing a subordinate as "Smith" does not give

the subordinate the privilege of addressing the senior in any other way than by his correct title. P... 18, "Ma'am" may be used in addressing a female officer when the use of "Sir" is appropriate to address a male officer. P. 18, Customs of rank the place of honor is on the right; a **"junior" walks, rides, or sits, by taking the position abreast and left of the senior. "Sir" and "Ma'am are used in conversation by a junior officer in addressing a superior and by all officers when addressing officers** "Taboos," (Punished as a Court-Marital may direct)Tab C (14) P. (S) 201.

b) Article 131. Perjury in a course of justice ...willfully, corruptly... gives any false testimony material to the issue or matter of inquiry...

c) Article 107, "False Statements, intent to deceive, knowing it to be false"

iii. DA Protocol Precedence Codes, (seat assignments) Tab C (11), P. (s) 188-190 *Richards and TACOM SES male counterparts' positions are classified above the General Schedule (GS-15), they are equal in importance. ES- V and VI go to the person- not the position (quota driven).*

2) Violated SES Regulations, *SESers must.*

a) Direct the work of an organizational unit of the agency; be held accountable for the success of one or more specific

programs, monitor progress toward organizational goals, and periodically evaluate and make adjustments to such goals; supervise the work of employees other than personal assistants; or otherwise exercise important policy-determining, or other executive functions. ¶202, RDecl, OPM's Guide to the SES, Tab C (10). P. (s) 170-187;(Senior Executive Service (SES) Qualifications; SES Selection Process, "Merit Staffing"

b) SES positions are considered to fundamentally be fungible leadership/ manager positions. Employment in the Civilian Service, AR 690-300, ch. 302, 7-2, at Pl Ex. 5,).

c) SES Awards, SES –R, AR 690-900-920, 1-3 ,(MC), P. (s) 20-60;

i. Appendix, Convening Authority, P. 37
ii. Convening Auth Responsibilities, P. 55
iii. Performance Review Boards (PRB) Apx, E, P. 54
iv. PRB Membership Apx E. 3 (5), Members must not be directly subordinate to the executive, whose performance is under review; E.3 (8),
v. Consideration is given to appointing women and minorities P. 55

3) **Richards Has One Client, DA.** Richards' allegiance is to her client, and not to Defendant's officials. (Contrary to Beauchamp's reason for violating Army Policy, off-site senior counsels "needed to bond," with the off-site BCHs, (despite Richards' designation as their "Chief Legal Advisor").

a) "An Army lawyer shall not form a client-lawyer relationship or represent a client other than the Army. AR 27-26, Rule 1.13(b), Pl. Ex. 32 V-IV, at P. 62;

b) "Practice of law requires the exercise of judgment solely for the benefit of the client (Army) and free of compromising influences and loyalties.

c) "A lawyer shall not permit a non-lawyer who employs, pays, to direct or regulate the lawyer's professional judgment, (Impossible to fulfill, when those subordinates are technically supervised and rated by a non-lawyer. AR 27-26, Rules 5.1(b & d), 5.4 (c), (e) & (f).

4) **Richards' authority flows from the Army General Counsel (GC),** a politically appointed SES, who serves as the qualifying authority for civilian attorneys. The GC retains qualifying authority for all civilian attorney positions in the Office of the Secretary of the Army and for those attorney positions throughout the DA in the SES."

5) **Army General Counsel (GC) Retains Authority for Creation of Separate legal offices,** AR 690-300, CH 302.7 §7, 3, a & b, at V-IV, P. 11; Pl Ex 5, (Supervision and Rating Army attorneys are the 'tools", which determine whether a new legal office is created within a command).

"The creation of new legal offices has to be approved by the GC of the Army: Only the Counsel of the Army has the authority to remove a civilian attorney from under the

immediate supervision of another attorney because that is the equivalent of creating a new agency legal office. **"Establishing a civilian attorney position that is not under the immediate supervision of another military or civilian attorney within the appointing officer's Command constitutes establishing a new agency legal office."** Compare, Senior OGC attorney confirmed that. Krewer could not have her own legal office. Krewer Aff, Pl. Ex. 27; ¶10, P. 5; Korte falsely testified Richards was attempting to change Army policy. Pl. Ex. 34(a) at [27, L. 21 –P. 30); Bacon's proposed memo for the Army Counsel, as sent to Korte, Pl. Ex. 22; Decl, ¶¶ 62-70.

6) **MSC Cannot Have Two Chief Counsels,** DA,HQ, US Army Materiel Command (AMC), AMC –R, 690-2, Pl. Ex. 35, V-IV.

i. Introduction, Definitions at 1-6 (b), P. 1-2, Title, "Chief Counsel" is applicable only to the Chief Counsel of a Major Subordinate Command (MSC) Legal Office. Intro, Definition of Chief Counsel I-5, (b) P. -2. Officer of a MSC legal office, Tab C (8) 158-166) Head legal ...P.

ii. Referral and Consideration, ¶ 4-3 (c),-6, (b) Chief Counsel is selecting official for attorneys within the MSC structure, P. 160

iii. Interviews, ¶ 4-3, Selecting official interviews candidates, if the position is supervisory, or at the GM / GS14 or 15 grade. Selecting official decides upon membership of the panel P. 165

7) **Scope of Representation**, All Matters Related to TACOM CG', TACOM Activities, Army's Procurement Executive Officers (PEOs), Tenants on All Official Business

a) "When a lawyer is assigned to an organizational element (TACOM) and designated to provide legal services to the head of the organization, the lawyer-client relationship exists between the lawyer and the Army as represented by the head of the organization, as to matters within the scope of the official business of the organization. V-IV, AR 27-26, "Rules of Professional Conduct for Lawyers, Rule 1.13, (a), Army as a client (DA) at 62; RDecl, ¶ 92;

b) **Newberry testified,**

"She's all of our Chief Counsel. We've got only one and that is she. P. 87 L. 25; P. 88, L. 1-10 at Pl

8) TAPES / Appraisals Critical Objective

Richards' duty to integrate all lawyers on TACOM premises into one legal office, the TACOM Legal Office Business Center (BC) ,"Continue to implement the transition Re: ACALA, ARDEC legal offices...."

[The TACOM CG, Richards' initial and senior rater evaluated her performance based on significant contributions against this objective. Compare, Beauchamp evaluation, rating period 1997-1998- at B (2) performance objectives... down graded Richards from exceptional to succeed in that objective. See-significant, contributions to that objective at "C." Note Korte input praising Richards in this area. Id Pl. Ex(s). 43-48. Appraisals, V- .37 and compare to his false testimony at P.?]

9) **Richards' Duties Are the Same for All TACOM, "TACOM Activities, and TACOM Tenants.[Supervision Gives Richards Direct Responsibility.**

a) "[Chief Counsel] serves as "Chief Legal Advisor to CG, TACOM, his staff and subordinate TACOM Activities, PEOs, PMs, and tenant organizations; **"Manages the Legal Office through supervision of subordinate supervisors."** (SJH, Pl. Ex. 40);;Plans and directs overall program to accomplish the Legal Office functional responsibilities and mission; Executes broad legal policy for Command mission accomplishments; Evaluates work results for policy conformance, effect of advice and influence, overall contribution to Command's objectives; Part IV, Summary of Duties, in all Richards' appraisals signed by the CGs. SJH Pl. Ex. 42-49; 6th Cir, V-IV, Fed Cir, V-II; at P. 205.

b) Chief Counsel provides senior level support to PEOs and subordinate Project/Product managers (total procurements in multi-billion dollar range. (located at TACOM-Warren and TACOM-ARDEC); Advise concerning legal implications present in current and long-range mission plans and programs for entire Army's ground fleet (and water craft)" Position Description (PD), P. 2 of 5, Pl Ex. 39; RDecl, ¶ 94, V-III; V-IV, P. 203.

10) TACOM-R, 10-1, Ch 2(1998) ROI My Doc. Duties § III- 2, P. 61) at Pl. Ex. 49.Ch 1/96/ Ch 2, 98, V-IV, P. 118.

a) Office of the Chief Counsel provides legal advice to the Commander TACOM, his staff, and subordinate activities on all areas of the law for which the office has responsibility;

b) Provides legal advice to the Commander, ARDEC (Armaments, Research, Development And Engineering Center, (Picatinny Arsenal, NJ), Director, ACALA (Armament And Chemical Acquisition Logistics Center, Rock Island, Illinois)," The Commanders, TACOM-Anniston, Army Depot,, TACOM-Red River Army Depot; TACOM-Sierra Army Depot; TACOM-Rock Island Arsenal; TACOM-Waterveliet Arsenal; Maintain and supervise an effective legal system and issue policy to ensure that required legal services is provided across the TACOM-PEO community.[Duty to supervise gives Richards direct responsibility] TACOM-Warren, TACOM – ARDEC, TACOM – Rock Island, TACOM – Anniston Army Depot, TACOM – Red River Army Depot. TACOM-Sierra Army Depot; TACOM-Rock Island Arsenal; TACOM-Waterveliet Arsenal;

c) Maintain and s**upervise** an effective legal system and issue policy to ensure that required legal services is provided across the TACOM-PEO community TACOM-Warren, TACOM – ARDEC, TACOM – Rock Island, TACOM – Anniston Army Depot, TACOM – Red River Army Depot. TACOM-

Sierra Army Depot; TACOM-Rock Island Arsenal; TACOM-Waterveliet Arsenal;

d) **Makes all final TACOM legal decisions affecting any part of TACOM's mission,**

e) **Developing common policy and interpretation, and programs, balance work load prioritize work. Control budget: (See TDA)**

f) Dealing with organizational function and mission changes that may have a significant impact on basic structure, key positions, work force, and costs. (TDA);

g) Work closely with all TACOM organizations, coordinating, and monitoring cases, assignments, responsibilities, and projecting workload.

11) **Non-Attorneys Cannot Supervise or Rate Any TACOM Lawyers in the Federal Employees General Service Schedule (GS-1-15);** All Are GS 11-GS-15 except Richards, A SES, In the Executive Schedule (ES-I-Vi) Along With Political Appointees. TACOM's GS attorneys are subject to the Federal Employees' General Schedule Supervisory Guide (GSSG). The GSSG requires,

a) "GS employees' to be <u>supervised</u> and <u>evaluated (rated)</u> by persons, who exercise both administrative and technical supervision over their subordinate workforce.

b) "Work assignment responsibilities must be credited to specific positions. **"Supervisory responsibility for a position may not be credited to multiple positions.**

c) Covered **supervisors are expected to plan, schedule, and direct work operations; evaluate work performance and assure work meets standards of quantity and quality; and exercise other management authorities (such as discipline, awards); "Threshold required for coverage, I.e., Spending 25% of the time technically and administratively supervising.**

d) Work identified as the Base Level must require of the immediate supervisor substantial and recurring use of technical skills of the kind typically needed for directing work at that level. GSSG, PI Ex 33, V-IV, P. 127. RDecl, ¶ 61, "¶ 91.

12) **Contract Lawyers Should Not Be Collocated With Directors Of Contracting, Or Their Equivalents And Should Not Be Rated By Them.** Army Regulation 27-1, 5-3, (C), (In this context their equivalents include the project managers responsible for the systems and requirement folks, those who have pressures to meet deadlines, RDecl ¶ 66, [Beauchamp was a logistician and believed it A-ok for contracting folks to be rated by requirement types. RDecl, ¶¶568-582 Beauchamp, exclusion from meetings, Contracting Officer chains]

13) **Richards is a Business Center Head (BCH)** like her Male SES and GO counterparts.

1) **Chief of Staff, Kirby Tes,** "Recall Andrews' decision, " that you were, in fact, going to

be a separate Business Center (BC)," T, P. 31, L. (s) 5-13, T, 4-32, V-XII, 191-220 ; ¶ 154, RDecl, V-III. Pl Ex 66;

2) "**CG Caldwell Tes,** "Absolutely, a Business Center Head (BCH)," when asked if he considered the Chief Counsel position a key position; Dep, V-XI, P. (s) 150- 169, T 13- 92, Dep. T. (Oct 9, 2003). P. 18, L.(s) 22-24, Pl Ex 67, See TACOM Legal Office Business Center, V-V P. 2; TACOM Legal Office Business Center (Realignment), V-V, P. 3.

14) **Richards is an integral member of the high-level management team, a business advisor.** [She decides where she needs to be; is required to practice preventive law; responsible to determine whether the advice she gives is legal advice or business advice. Business advice does not have to be followed; and participates in business processes from the planning stage through the end....identifying potential legal hurdles, and giving business advice as to the best way mission and goals can be accomplished in a legally sufficient manner on all aspects of the official business of the heads of organizations to which assigned.}

15) "In addition to being, the command's contract legal advisors, contract lawyers are **business counselors**. As representatives of the Command Counsel, they are part of the management team. Command Counsel shall ensure support is provided through disputes process. Business

Counselors, Principals of Contract Law Practice, Pl Ex, 40 – AR 27-15-3c (3), V-IV, P. 115. AR 27-1, Ch 5-2, P. 96; AR 27-1 Ch. 15-3(c) (3), P. 115; AR 27-1, Ch 15-4(d), P. 116.

i. "Duty to give business advice on all matters related to the TACOM CG and the tenant PEO's official business, all TACOM activities, by **counseling the TACOM CG, and the tenant PEOs, their staff, and organizational elements on management and policy making decisions, which may involve significant financial, personal, social, or political implications.** AR 27-1, § 15-4, (d), RDecl, ¶108, V-III.

ii. Command Counsel **participates fully in the discussions about the propriety or wisdom (business, financial, need, or otherwise) of a proposed action**. These lawyers are in a unique position to provide effective counsel, usually having a **perspective that crosses the other functional areas**. As "honest brokers," they can bring a useful objectivity to problem solving." " Command Counsel should be **personally involved in the acquisition process AR** 27-1, Ch 5-2, P. 28, 15-3(c) (3), (d), P. 43; Business Counselor, Manager Ch. 15-4 (d),

iii. "**Army policy mandates full legal counsel participation throughout the acquisition process** AR 27-1, 15-4, b (2), (AFARS 1.697).V-IV,

iv. "Command Counsel **must identify appropriate dollar levels, originating offices, types of requirements and or types of contracts wherein early involvement is practiced on a routine basis;** AR 27-1, 15-4, d. V-IV, P. 84-117.

16) **Army policy mandates Richards' independence.** In her legal capacity, Richards has a "stand alone" role, free from any direction or influence from any other person at TACOM to include the CG. Richards and her subordinate lawyers serve as a major cog in the wheel of a system of checks and balances vital to protecting the integrity of the system and keeping the trust of congress, taxpayers, and businesses, who deal with the agency. Independence is critical to Richards' enforcement role, a challenging duty__ Richards

a) **"Exercises maximum freedom in accomplishing assigned responsibilities, and exerts leadership without reference to higher authority."** Position Description (PD at P. 2, V-IV, P. 201.

b) **Must protect the independence of subordinate attorneys.**
"Independence of a lawyer / Freedom from environment conducive to undue influence... Make reasonable efforts to ensure lawyers conform to Army's Rules of Professional Conduct; Ensure that subordinate lawyers are properly trained and competent. AR 27-26, Pl. Ex. 32 (a), (b) and (c); ROI My Doc. Duties at III-5, P. 85; RDecl, ¶ 73.

c) Enforcement Role

AR 27-26, RULE 1.13 (c) "If a lawyer for the Army knows that an officer, employee, or other member associated with the Army is engaged in action, intends to Act or refuses to Act in a matter related to the representation that is either a violation of a legal obligation to the Army or a violation of law which reasonably might be imputed to the Army the lawyer shall proceed as is reasonably necessary in the best interest of the Army. ; "Give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the Army and the apparent motivation of the person involved, the policies of the Army concerning such matters¼, and any other relevant considerations. ¼ Any measures taken shall be designed to minimize disruption of the Army. Measures may include among others;

i. Advising the head of the organization that his or her personal legal interests are at risk and that he or she should consult counsel as there may exist a conflict of interest for the lawyer and the lawyer's responsibility is to the organization;
ii. Asking reconsideration of the matter;
iii. Advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the Army;
iv. Advising the person that the lawyer is ethically obligated to preserve the interests of the Army and, as a result,

must consider discussing the matter with supervisory lawyers within the Army lawyer's office or at a higher level within the Army.

v. (Referring the matter to or seeking guidance from higher authority to the matter in question.

vi. In no event shall the lawyer participate or assist in the illegal activity.

vii. In dealing with the technical chain of supervision, including, if warranted by the seriousness of the matter, referral to the Army lawyer assigned to the staff of the acting official's next superior in the chain of command.

viii. If, despite the lawyer's efforts in accordance with paragraph (c), the highest authority that can act concerning the matter insists upon action, or refusal to act, that is clearly a violation of law, the lawyer may terminate representation With respect to Army officers, employees, or members, a lawyer shall explain the identity of The Army as the client when it is apparent that the Army's interests are adverse to those of the officers, employees, or members.

Part B.

Comparison, Decisions, Federal Circuit(M.S.P.B. AJ) SIXTH CIRCUIT, Agency Representative's (ARep's) misrepresentations and AUSAS' misrepresentations SJ Hearing Oral Argument

(SJHTs); impeached with direct quotes , testimony, regulations, email ...

1. **The AUSAs make** conclusory false statements to the DC.

a) Pervasiveness of the adverse 'acts' by misrepresenting categories with multiple 'acts' as an 'act; falsely averring Richards alleged ten 'acts,' **when sixty to seventy are closer to the mark;**

b) Discriminatory motive" "SJHT, Pg 12, Ln 4, No evidence that management was motivated by gender or retaliation; Pg 13, Ln 6-11. **Doesn't allege inappropriate touching, or advances of a sexual nature**...

c) No retaliation: Pg 13, Ln 12; No suggestion whatsoever comments were made in retaliation for EEO activity **because she was not taking any EEO activity.** SJHT, Pg 8, Ln 1-15, **"She spoke with a couple of friends / associates at AMC HQ** in the legal department; Ln 24-25, **Pointed out some of decisions decided were because she is a woman** ...She nominates the conversations to seeking EEO counseling, that they don't have any precedential value in the courts. Administrative Decisions are distinguished here. Plaintiff never suggested to them that they triggered an EEO investigation; labels the first retaliatory act as the first act; and the first 'act' as the second act; misrepresented the issues, material facts, e.g., terms of employment (authority, duties, scope of duties, independence, selection process; violated regulations with a direct nexus to those terms;

adverse acts in each of the ten acts; **and that the "ten acts' all proceed April 23, 1999," SJHTs,** page 6, Ln 16-22. Compare, Timeline, Richards' Appendix (PA) P1.

SJHT, Pg, 11, Ln 20-21. For retaliation claim there has to be an adverse personal action, a significant action, which would apprise Plaintiff of significant rights"; it don't rise to level of retaliation standard , as well." L. 24, Individually or together [the ten acts]-not sufficiently severe to be actionable; {labels Richards' protected protest to Beauchamp, May 6, 1999 as "rehashing old acts" and the DC parrots it back). "No action, which would apprise Plaintiff of significant rights [fails to disclose Richards protested to Andrews and Beauchamp] SJHT, P. 8, L. 15, P. 8, L. 24-25, V-I, SJ Hearing Transcripts (SJHTs) P.11, L 20-21. **The ten actions all preceded April 23, 1999; L. 18-22**, To the extent she's claiming actions that occurred since then, Plaintiff can neither show they are discriminatory or retaliation; insufficient to reach back; SJHT, P. 11, L. 5, Exhaustion argument fails for two reasons_ Taking **the ten actions** (individually or separately do not as a matter of law rise to the level of creating a hostile work environment, not severe, pervasive...as required by law." **Compare, Timeline,** ,P?

Exhaustion

2. **The DC buys in,**

"She should have had one Act fall within the 4[5] day period, one Act of discrimination, or hostile work environment, or retaliation **all within the 45 day period**, preceding the filing of her EEO complaint, and that Act should have been related to other instances of the

same pattern of harassment....and none is really alleged. ... **Some court "called Richards and no date was given for the telephone call, not enough (to meet the exhaustion requirement."**

3. **6th Cir partially buys in,**

"[Richards] argues on appeal that the Army's failure to take remedial action by maintaining a pervasive policy of discrimination against Apple[ant] resulted in overlapping, continuing retaliatory violations, which accelerated with her continued protective activity." As argued by the defendant ...mere maintenance of a hostile work environment without continuing acts of discrimination could lead to absurd results. ....The plaintiff does, however, contend that two qualifying acts occurred within the applicable 45-day period that ran from April 23, 1999, until the contact with the Equal Employment Opportunity counselor on June 7, 1999. She submits that one such Act involved a conversation she had with General Beauchamp in early May 1999, shortly before Richards began long-term sick leave. According to the plaintiffs deposition testimony, during that conversation Beauchamp "asked me if there was anything that he had done that was related to my sickness, and I told him that yes, there was, "[A]nod I went over the seating, I went over the rating. Q. So this was the seating in the VTC room? A. Right. Q. Ratings? A. Rating my off-site... attorney representatives. Q. Okay. What else? A. I mentioned Meadowbrook. Q. And this was the Board

of Directors meeting at Meadowbrook- A. (Interposing) Where--Q. -in February of 1998? A. Yes, yes. Q. So we have those three things. Were there any other things that you can-- A. I know there were a few other things. **I stressed his refusal to correct when I'd asked him over and over again.** ...very clear in telling him that I believed I was being discriminated against based on my sex. Q. So you used the word "discrimination" with him at that meeting, as you recall? Yes. ...

[M]ere recitation by the plaintiff of acts occurring outside the relevant time frame does not magically bring those acts within the applicable filing period. The plaintiff also directs our attention to a telephone call that she received in mid- May 1999 while on sick leave, informing her that her request for two additional attorney positions for the TACOM legal staff had been denied by Douglas Newberry, TACOM's chief of staff [CORRECTION, Deputy to the CG]. The defendant insists that this "Act" does not make Richards' June 7 contact with the counselor timely because the "alleged non-filling of lwo legal positions (was not] in any way motivated by gender or retaliation animus." ...**Plaintiff has identified an alleged Act of discrimination or retaliation that occurred within the 45-day period prior to her initial contact with the administrative process (emphasis added).**

Discriminatory Motive

4. **The district court (DC) buys in,**

Richards] "failed to set forth the elements of a prima facie case... None of the acts complained of— even if she had met the time limits — none of the acts complained of appear to have been based on sex or to be adverse treatment because of her sex... ... no external evidence to show the acts were based on her sex,... not enough was said about her sex." (*Harris*); "No harassment, no pretext, no retaliation, and the reasons given for the adverse actions sound legitimate," ...No harassment, no disparate treatment, no pretext, harassment, protected activity, retaliation and the reasons given for the adverse actions sound legitimate. SJHTs, (Contra, Harris)

5. The Sixth Circuit buys in to **AUSAs' misrepresentation that Richards alleged ten acts, fails to establish discriminatory motive, no disparate treatment, no harassment, no pretext, decisions were legitimate,** no protected activity, no retaliation, and the actions were legitimate business decisions.,"

(95% relied on the SJHTs and adopted the AUSAs' false representations.

"Other than isolated comments regarding female body parts, every instance of alleged discrimination ... was driven by ...gender-neutral considerations ...The evidence adduced by the plaintiff cannot establish the severe or pervasively abusive atmosphere necessary to support a finding of a hostile work environment...[Cannot] singly be considered severe enough "to alter the conditions of her employment and to create

an abusive situation.. Cannot point to any evidence, other than her own suppositions, that would directly or indirectly establish a material dispute over whether the decisions of which she complains were caused by gender discrimination... The reasons articulated were reasonable, legitimate, and not proven by Richards to be pretexts... typical business decisions....incidents ... cannot be considered harassment at all... no indication ...treated differently ...because of her gender... not sufficiently egregious to create a hostile working environment. Considered in the aggregate [plaintiff's claims suggest no more than that she was quick to assert "harassment" or "gender discrimination" when a workplace decision simply did not go exactly as she desired. **End Page9...** "The plaintiff further contends that the perceived mistreatment that she received at the hands of the defendant was in retaliation for complaining to her superiors about the alleged gender discrimination... "The plaintiff alleges numerous acts and decisions by Army personnel that, **she claims, were motivated solely by a desire to discriminate against women." (Emphasis added).....** Under such circumstances, the district court properly granted summary judgment to the defendant on Richards' retaliation claim as well." ...The evidence adduced by the plaintiff cannot establish, the severe or pervasively abusive atmosphere necessary to support a finding of a hostile work environment".... ,Richards has failed to satisfy her evidentiary burden of establishing

a hostile work environment at TACOM. ---See protected activity, **P.**

1.

a) Record Reflects,

A. Richards shows discriminatory motive via, direct evidence; disparate harassing decisions / treatment based on sex and protected activity; stereotypical attitudes toward a woman in her position; retaliatory treatment based on protected activity; and Pretext (false (perjury), inconsistent, and contradictory testimony)

a. Decision makers and those involved in the decisions were predisposed to coercively discriminate against Richards, a civilian federal employee, equivalent in rank to a military Brigadier, and the first female member of the Senior Executive Service, to be appointed to serve at the US Army Tank- automotive and Armaments Command (TACOM), the first female member of the Board of Directors (BOD), and the first female TACOM Chief Counsel, Head of the TACOM Legal Office Business Center, and acted on it.

1. **CG ANDREWS**

a. Disinterested witnesses

i. **Chapin testified**, "Heard Andrews say things that should not be said... not aware of the reasons.., Andrews did make comments pertaining to sex... he said things that he should not say. Profanity expressions could be offensive to some people. Primarily Beauchamp was surrounded by males. (Asked if he had heard Andrews refer to Richards' sex?) , "Andrews often said things,

which he should not say." (Chapin Testimony, T. Enc.6. P. 46, Ln 9-25 and P.. 47, Ln 9 at Pl Ex 70); Compare RDecl ¶253-258;

ii. **Goldsmith testified**. (Do you recall any time when Andrews made any comments about female's body parts?) Yes, there was one case one afternoon. L. 5, It was a meeting when Rick and I were there and Colonel Kirby. I talked to Colonel Kirby afterwards. (Was Hazel White also there?) L. 10. No, I don't believe so, because it was all men and you don't recall a meeting when Hazel White was there when Andrews talked about female body parts. No, I do not recall that. L. 12. Radford asks, "Going back to the drawing that he made, did you see the drawing? (Did Andrews circulate the drawing among the men who were present? How did you know he made that drawing?) It was placed on the table in front of him. We all just sat around at the table. It was visible by all. (L. 19, did he make a comment or just the drawing?). L. 21, he made a comment. (Do you recall what that comment was?) No, I don't. (" Did you find the comment offensive?) Yes, and that is why I told Colonel Kirby. Let me go back. When I find a comment offensive like that I do not comment. I do not smile. I do not show approval. And that was my reaction, there. I talked to Colonel Kirby afterward, because that was my chain of command in to the front office. ("I am not trying to be offensive either, and I don't generally talk this way. Do you recall Andrews using the word, "tits"?)" Yes, he did." (And that is one of the words you found offensive?) "Yes"(.T, 118-145, V-XII, 183-189 Enc. 3, P. 137, L. 2.)

iii. **Marlene Ellul states**, V-VIII, P. 1, Pl Ex 83 (D) and Pl Ex 17) Recall Richards telling me (at the time it happened) that Andrews discussed women's body parts in inappropriate settings. Compare to,

iv. **Bradley Tes**, T, 157-175, V, XII, Pg 117-136 T, P. 166, Ln(s) 23-25, RDecl; V- III ¶ 167, Yes, I have heard that." Yes, I have personally heard Andrews refer to women's body parts. This was said sometimes in mixed company and sometimes just with gentlemen. These statements were at work. (Exactly what was said?), "Let's see. One time referring to bell curves, statistical analysis, being compared to two tits on a mountain. You are stretching my memory. There were other times. I just simply cannot remember. L. 3, he referred to women popping babies.... (Did Andrews speak like this in huddles in the morning?), "Yes there were at times women were present¼recalls specifically that Andrews female aid "Captain Lorraine" was present. Jane Erb attended some of the huddles." P. 167 Lines 16- 20 "No, I am trying to recall some other incidents that would substantiate it". L. 4 " I will just say inappropriate because of that one time" L. 14 and 16 P. 172, L. 18-25, ...The one bell curve he then drew another and said geez, what's this? It had nothing to do with what I was talking about; He basically said two tits on a graph¼like a joke... There were other jokes like that. I simply can not remember all of them¼he was not the kind of person you told that you took offense to his statements¼. P. 173 "My superior at the time was Goldsmith. He was equally offended...my suggestion about this whole

investigation is to talk to him. ("What do you mean protected categories"?) I mean blacks, Hispanics, women, handicapped. I do not have specific statements that he made but I do remember him as far as one specific incident joking about having to sign an annual affirmative action plan. I simply cannot remember the specific comments but they were offensive at the time. That is not much to give you {P. 171, L. 15-16). (Basing perceptions on that one incident?), that and my perceptions when I saw him socially. I can't say more than I remember. L. 4, P. 172, ("There must be some incidents you are basing your conclusion on, Abusing is a very strong term, don't you agree"?) Andrews was a bully. My perception is he made a fair attack on every group. What is bullying?), Bradley states it goes back to that a leader is, a very narcissistic leader, self absorbed, misusing that power, putting an influence on people who are lower than he is in the food chain. My judgment of inappropriate would be not treating people in a professional manner, not treating people with respect. When asked if he called him names," Yes/no is the answer¼. I think that he basically abused most protected categories within the law. (L. 1, P. 170, (Any other examples?), "I can't remember. There were other times. I just simply cannot remember. At L. 3, he (Andrew) referred to women popping babies...I can't really remember a whole lot more. This was said sometimes in mixed company and sometimes just with gentlemen. These statements (by Andrews) were at work. (Speak like this in huddles in the morning?) "Yes, there were at times women were present recalls specifically that Andrews female aid "Captain Lorraine" was

present. Jane Erb attended some of the huddles".(See L. 20, P. 167).(You mean based on that one time you're saying, that based on that one time you are saying that is inappropriate to every one else in the Command?) L. 16-20), "No, I am trying to recall some other incidents that would substantiate it" L. 4.

b. Pretext

i. CG Andrews made false statements about his actions and inactions. Andrews testifies, V-XII, Pg(s) 1-16, T, 118-177, do not agree that I referred to women's body parts. Disagree I was derogatory about women. Those protocol rules don't mean a lot to me. I'm relaxed. T, P.(s) 132,133, 136, Ln 2, 141, Ln 16-21, "Vehemently disagree" I tend to be informal...Protocol isn't the bell-ringer. T, P.(s) 132,133 Ln -25, 136(45), Ln1-3, 141 (V- P. 46), Ln(s) 16-21, to Goldsmith Tes, Andrews speaking of women's tits, complained to Kirby, who was present, and also heard the degrading comments.

ii. Kirby gave false testimony to protect Andrews, Compare Kirby's FALSE Tes. T, 4-32 V-XII, P.(s) 191-220 No occasions, Andrews spoke in a negative, derogatory manner about people's feelings, people....kind...sensitive to Pl Ex 66, Pl Ex 71; Compare, to Goldsmith's and Bradley's testimony

iii. Compare, CG Andrews' false Tes, "Doesn't agree that he referred to women's body parts. " Vehemently disagree" (derogatory about women). I tend to be informal...Protocol isn't the

bell-ringer. Those protocol rules don't mean a lot to me. I'm relaxed." T Pg(s) 132(Pg 44),133(TAB Pg 44), 135(TAB Pg 44), Ln -25, 136(45), Ln1-3, 141(TAB Pg 46), Ln(s) 16-21, TAB N (1), Pg(s) 41-54, , Compare \\\ was in VTCs and huddles Pg(s) 69-71, and had no reason to question his credibility, Pg 72, Ln 9-Pg73 Ln 7-Pg 74, Ln 9, "After reading all the testimony , I probably would have said that (comparing bell curves to woman's tits) and other examples Bradley gave) .Kirby FALSE Tes. V-XII, 191-220, T, 4-32, No occasions, Andrews spoke in a negative, derogatory manner about people; he was kind...sensitive to people's feelings; Goldsmith (agency witness) Tes, , V-XII, 183-189, T, 118-145, at Pg 137, 138, Ln(s) 6-25; 139 1-13, 145, Ln 2., Andrews speaking of women's tits, complained to Kirby, who was present, and also heard the degrading comments, who had problems with racial slurs of his own.

2. **DCG, SES, NEWBERRY** was predisposed to discriminate against ___Richards, the only SES (all sites), that he did not immediately supervise, RDecl, ¶s 114-127; male dominated organization, Army's first female high echelon leader. Newberry Tes, P. 37, Ln(s) 1-5, at V- V-XII (16) at 243, "I did not come down to say hello. She didn't work for me. She worked for the CG,

a. Carolyn Parnell's description of Newberry's practices, Aff. SJH, PL Ex 50, V-VIII, P. 14. "Going after complainants in Resource Management, before he became DCG, credibly supporting discriminatory motive for Newberry's conduct and actions, which significantly disadvantaged Richards and contributed to ruining Richards' reputation, Parnell P. 14. History going after

"Complainants, females in higher-level positions, over whom he had little control; forcing them to retire, Newberry ruined not only her career but others, some of whom she has named who have filed discrimination complaints or engaged in any type of protected activity, taking her, the " complaint filer" under his personal "thumb.". Tactics, building up group of followers, selecting them without competition, and placing them in a position where they "owe" him and fear his retaliation if they do not do as he says. ¶ 4. Pg 1; Few of us, who resisted were targeted as a lesson for others, who might be thinking about resisting him; ¶ 13; Complaint filer black listed, denied promotions, training, treated with hostility and was retaliated against by Comptroller and other management officials controlled by Newberry; Geraldine Washington, Edmore Armour-Ohanmu, Emma Ferguson, and Leady careers were dead-ended by Newberry; ¶ 15, Pg 5; Selection of a white male over two higher qualified females, (Gloria Gilmore and Diane Weaver). One of the females had over twenty years of work experience in Personnel and on several occasions had acted in the capacity of Personnel Director;"¶16, Pg 6; Newberry favored a white male dominated management workforce; Known to harass females that obtained higher level management positions, outside of his authority, until they retired." Iona Abram's informs Richards, to watch out for Newberry, he was evil and had gone after him.

b. Patricia Redding, Chief of the TACOM Small Business Office, has a tape of him going after her,

afraid for her job refused to write an affidavit, RDecl, ¶ 213;

c. Soehren Tes, Newberry went after her, believes its because she is a woman, T, Pg 38-39, Ln(s) 23-25; Pg 40, Ln(s) 10-13;. Pg 91-95, Ln(s)10-25, Pg 95-97; Pl. Ex.72, Pg 36, Ln 8-9,Pg(s) 36-40 Soehren Aff. Pl Ex 72, V-VIII, P. 62;

d. Newberry going after a whistle blower, Schmittling decision, where the Court found him and one of his henchmen, Gianfermi's, TACOM's Deputy for Resource Management (RM) under Newberry, incredible. Andrews delegated whatever he could delegate to Newberry. Newberry had no formal control over Richards as he had over male SESers, dependent on his recommendations for substantial awards, RDecl, ¶s 203-226.

3. **Chief Of Staff, Kirby** was predisposed to discriminate against Richards, a civilian rank equal to a military general, stereotypical view.'

a. Addressing Richards as "Dear" and "Young Lady," despite her high-level rank, position, and not knowing her.

b. Failing to cease, when Richards directed him to cease;

c. Admitting it was, "his way"; (direct evidence), different treatment, males, who outranked him, 'a couple of times in his office...during a break...may have in private meetings," Kirby T, V,XII, Pg(s) 191-220 T. 4-32,

P. 19, Ln 13 -20, Pl Ex. 66, V-XII, Pg(s) 191-220; d ¶'s 163-167, RDecl;

d. Telling Richards there was not a pager or cell phone available for her, and not saying how to get one.

4. **SES, MEHNEY**, Director of the Acquisition Center was predisposed to discriminate against Richards.

a. Mehney walked up, interrupted, ignored Richards, shook Morgan's hand, and when asked, why, responded in a manner that revealed the sexist and discriminatory environment to which Richards entered at TACOM by strangely stating that he didn't know if it was okay.

b. Lewandowski Tes., T, 3-18 V, XII, Pg(s) 253-270, asks at the end of her testimony if she could please add something. "There was poor treatment of the legal office since the beginning of Richards' tour. She was having problems herself. Mehney was treating me "with disdain and disrespect." An attitude had spread toward the legal office that was not there, when Dawes was Chief Counsel. On one occasion when I attended the BOD meeting for Richards ...learned by some statement... heard Dan Mehney say that there was going to be a meeting in the Interim Armored Vehicle (IAV) on Saturday morning.

c. Burt Aff V-VIII, Pg 33-34, Meyer simply walked away from Richards in mid-conversation. It struck me as odd that Meyer would turn his back on a higher ranking individual.; Mehney bypasses Richards and goes to Korte on a major source selection , which the Source Selection Authority, Yakovac the Source Selection Authority asked

Mehney and Richards to get together and work out a major issue. Both were on the Source Selection Advisory Counsel (SSAC); Richards was the legal advisor to the SSA.I was invited to attend a meeting with Richards at 2:00pm on 7 Sep 00. The meeting was with Mehney. Meyer was also in attendance. The meeting took place in a small conference room adjacent to Mehney's office. At that meeting, Richards expressed her opinion, in a normal tone of voice, that it was her decision to bring an issue to the AMC Command Counsel, that she was this command's attorney. I don't recall that Mehney responded to this statement. Richards repeated what she had said and added that this was not the first time. Mehney became visibly furious. His face was red and he started shouting at Richards that he was the PARC and that he would call whomever he wanted and go anywhere he wanted for advice. I sat there completely shocked at the rage in his face and voice. I found Mehney's enraged expression so disturbing that I just wanted to remove myself from the room. Since I could not leave the room, I just looked directly at the table instead of the other people in the room. To paint a picture of the intensity of this event, I have never, in my entire 21 years as an attorney never seen anyone scream at another person like this in the work place. In fact, I have never seen anyone scream at someone with such venom in my life. After being screamed at for a while, Richards said something to diffuse the situation and the meeting went on to discuss the problem and be productive. I don't recall what Richards said that diffused his confrontation, but she said something that calmed the situation

5. **Chief Of Staff, Col. Laney Pankey,** was predisposed to discriminate against Richards.

a. Asked why Beauchamp might have wanted to exclude Richards as a member of the TACOM Board of Directors (BOD) "meetings at the BOD were sensitive; we wanted to make them small. (Richards was the only BOD member Beauchamp decided to exclude). T, 3-29, V,XII, Pg(s) 313-340 ,

b. Hazel Moore –White, Acting Chief of TACOM Special Staff Business Center, under Chief of Staff, T, 99-110, V,XII, 383-394, Colonel Pankey treated Richards differently in terms of his attitude... behavior...in comparison to males. P. 104-105 Ln 6-25, lack of respect, very little patience... same behavior toward Moore- White, P. 104-105,did not treat males this way, P. 105,Ln 5-18,certain females,,09-25, only exhibit a lack of patience for females, observed Pankey intentionally walking away from Richards in the middle of the conversation walked away, Goldsmith turned around, told her he couldn't talk about it or something, and he walked away, T, P. 109-Ln 16-P. 110, Ln 22,. See Pankey's and Goldsmith's false testimony further below.

6. **Beauchamp,** July 1997-August 13, 1999,was predisposed to discriminate against Richards.

a. Track record of discriminatory animus, a predator's pattern of selecting a victim in a protected class and maliciously going after him or her, selecting a vulnerable minority to harass, and by the time he arrived his predecessor had a campaign in place harassing Richards

b. Assigned to HQ AMC after he received his third star (LTG), victim was a Hispanic SES, Carlos

Piad, who became so ill and incapacitated that he gave up his SES attempting to get away from CG Beauchamp Hispanic, who gave up his SES to escape from Beauchamp, Piad, and telephone conversations. After Piad gave up his SES to hopefully escape from CG Beauchamp's emotional abuse, CG Coburn found him a position in the United States Army Security Assistance Command (USASAC), headquartered in the same building; somehow CG Beauchamp managed to keep him in the building, when USASAC moved to Belvoir. Richards personally stopped CG Coburn in the hall, when he was visiting TACOM, and said, "Please help Carlos. He responded with surprise and said, "Do you know about that?" I said, "Yes." He said, "He'll be all right." He is now a GS-15 at Belvoir, to the AMC Commanding CG John Coburn begging him for help). Carlos Piad's emails to Richards and the AMC four stars, CG, John Coburn begging for help; Beauchamp was 'going after him." s. (2001) Pl Ex 84, V- J (3), P.(s), 3-8; ¶299-300, RDecl

7. TACOM-ARDEC COMMANDER, BG BODDIE was predisposed to discriminate against Richards.

8. TACOM-ARDEC COMMANDER BG ARBUCKLE was predisposed to discriminate against Richards.

9. CHIEF OF TACOM-ARDEC LEGAL DIVISION, FRANK CASSIDY (prior EEO activity (Ms. Linda Mils, Who worked for him)), was predisposed to discriminate against Richards.

10. TACOM-ANNISTON COMMANDER COLONEL POTTS was predisposed to discriminate against Richards. Problems with Potts continue TAB J (24),Pg 74; April 11, 1999, Email, Commander, TACOM-Anniston, Colonel Potts to TACOM –

Anniston Legal Office, directs legal staff not to communicate in any fashion with Richards ,without his express permission violating AR 690-300, J (25), Pg 75, Richards first sees message September 22, 1999; 4/21/99, Boley, Warren Business Law attorney email to Richards; (Anniston Commander Potts insists reports go through him J (26), Pg 76-77. Problems with Potts continue, TAB J (24), Pg 74; Potts email to Anniston attorneys, directing the legal staff not to communicate in any fashion with Richards, without his express permission, TAB J (25), Pg 75, and would violate AR 690-300, Ch 302, §7-8 Evaluation, head of Legal office Performance, if Anniston was a stand alone legal office, and even more as far as the relationship with the TACOM Chief Counsel. TAB C (25), Pg (s) at Pg(s) 6-8), TAB J (26), Pg (s) Pg 76-77.

B. **PROXIES DEMONSTRATE A STEREOTYPICAL VIEW OF A FEMALE IN RICHARDS' ROLE THAT CAN BE EASILY MISSED IF ONE DOES NOT HAVE KNOWLEDGE OF the level of "SPECIAL STAFF."**

1. Andrews, Beauchamp, and Caldwell demonstrated a stereotypical view of a woman in Richards' role, by directing her to go to "Doug," if she had a problem, telling her she did not need to rate because she "had the cloak of the Commander," asking her why she needed to rate, when, of course they rated off-site people, who assisted them with their mission and functions,.. They failed to say the same to the Anniston, ARDEC, or Red River Commanders, despite Richards's duties. Instead, they labeled Richards a complainer, and a trouble maker after she engaged in protected activity. They passed this

message on to one another and up through the higher level commands. Andrews testifies: showing a stereotypical view of a female in Richards' role. She had adequate assistance in accomplishing the task of integration. Told Verlyn to bring any contentious problems to Doug any difficulties in trying to integrate the three legal offices. V-XII, T. 118-177, at 153, Lines (Ln.) 9 - 12); Pg(s) 1-16 Pl. Ex. 21,

2. Beauchamp's testimony that SES Mehney, Director of the Acquisition Center was his personal staff officer. There is a distinct difference between Richards and Mehney... Thought of Richards as 'special staff.' 'Special Staff' is a "term of art' used to describe employees in the Chief of Staff Special Staff Business Center, those in the TACOM Business office, EEO office, the Strategic Planning office, none of which are SESs or GOs, and generally their grades run from GS-7 to a GS-14; Would he have testified that he thought of the TJAG as "special staff.(See organization charts at (a) (b) (f) and (h), Pl Ex 20) Mehney was not on Beauchamp's personal staff. He was supervised and rated by DCG Newberry. The DCG, the Chief Counsel, and the Chief of Staff are on the CG's personal' staff. The DCG and the Chief Counsel are the only SESs supervised and rated by the CG. Beauchamp shows is stereotypical view by admitting that when he decided not to appropriately place Richards in the supervisory/ rating chain he compared her to lower graded "special staff", who worked for the Colonel, Chief of Staff (equivalent to a civilian GS-15 List, special

staff positions, Compare, Newberry clarifies that there is a difference between personal staff and special staff, T, P. 60, Ln(s)23-24, P. 61, Ln 1, V- V-XII(16), P. 267. When you say "special Staff, do you mean to place yourself and Richards on Chief of Staff special staff? P. 61, Ln 10, No. Clearly not. Stereotypical Manner Bringing Richards On board as a Newly Appointed SES, TACOM's First High-Echelon Female, Coming from outside the Command.

3. SES, Chapin testified "When Verlyn came as an SES she took on a very difficult job. The legal job is tremendous. A new SES requires making an environment conducive to success. Tes, 28-61 V-XII, Pg(s) 137-171 T, P. 33, L. (s) 16-22. This was not done well. It is the Commander and his deputy's responsibility to make this transition requires special attention, a special environment . . . Special attention is needed for new SESs in the early months, P. 34, L. (s) 1-11. . . There were different leaders when I became an SES . . . Would have fallen on my face without their help . . . The same courtesy was not extended to Verlyn, P. 34, lines 22-25, a million little things...not done well. not extended the same courtesy as Larry Schieble...The Deputy to the Commander has continuity between the s (tours run about two years)...watched it done well for Dan [Mehney], Dan became an SES a year and some more before Verlyn.... Verlyn is the only female SES here. .... no efforts to bring Verlyn up to speed... Andrews did make comments pertaining to sex... he said things that he should not say profanity expressions could be offensive to some people. No welcome first few days

Newberry Tes, P. 37, Ln(s) 1-5, at V-XII, at 243, "I did not come down to say hello. She didn't work for me. She worked for the CG.

C. There cannot be a legitimate reason, when Proxies make material false statements, when addressing all areas complained, and violate regulations with direct nexus to the agency's adverse acts and Richards' terms of employment. **P.?**

D. **AUSAs' Second Action, Misrepresentation of Material Facts, VTC Seating.** "There would be regular teleconference meetings to discuss business aspects. P. 14, L. 5-14, Kalt(Acting Chief Counsel after Dawes retired) (Dawes) sat in the front row...Top attorneys at other locations did not sit in front row; P. 14, L. 15, People in front row were there on a function basis, .. Business meetings to discuss business matters... Role of the attorney would be to advise the CG; P. 14-15, for a period of time one of the business managers was female, COLONEL Marcia Morgan... During those years she sat in the front row P. 14, L. 15-23; People in the front row were done on sort of a functional basis. <u>These were business meetings to discuss business matters. Chiefs of different business units sit in the front row because they would be doing the talking.</u> Role of the attorney would be the advisor to the CG. Chief Counsel sat at right elbow." Compare,

Richards also claims gender discrimination in the decisions of Generals Andrews and Beauchamp to have her sit behind them at video teleconferences with other Army commands. ...The testimony in the record is uncontroverted that these teleconferences were conducted in a small room with seating for only seven individuals around the table and 13 additional seats in a second row that did not appear on the video camera....

Seating is a category; not limited to VTC seating. Assigning Richards a back row seat was a death knell in a military environment. Team members don't sit, where other members have their backs to them, Explicit message/ encouragement to harass, ignore, insult, and publicly humiliate Richards, that Richards was not to be treated with the same respect mandated for other GOs and SESs, to spread to other leaders and lower levels. RDecl, V-III ¶155, P. 61. Exh I. Any attempt to inject into the "game" broke the nonverbal rules.

Compare AUSA's false reasons for not seating Richards at the VTC table, "these were business discussions and Richards' job is to give the cg legal advice and the dc statement that the reasons sound legitimate to her SJHTs. Compare to Richards' terms of employment. Participants' false, inconsistent, and contradictory testimony. UCMJ, Article. 131. Perjury, willfully and corruptly--upon a lawful oath ...gives false testimony material to the issue or matter of inquiry; article. 107. :...false statement, knowing it to be false, shall be punished as a court-marital may direct c.(14) UCMJ; (excerpts 49th edition, LTC E. Bonn, USA (Ret.), "taboos," the army's officer guide from , P. 933 at P.(s) 2. V- C (15).

Proxies violated regulations and Richards' express duties, as Chief Legal and Business Advisor to all executives. See duties, P. 8. Richards, a " business counselor, participates in business processes from the planning stage through the end, identifying potential legal hurdles, and giving business advice as to the best way mission and goals can be accomplished in a legally sufficient manner on all aspects of the official business of the heads of organizations to which they are assigned. **P.?**

Although Andrews knew Richards was arriving, he moved the Sergeant Major to the table. Andrews admits he did this after he arrived, but fails to disclose he did not direct this action until one and one half years after he arrived, and after he, Kirby, and Newberry were aware, January 7, 1996, that Richards accepted the position. Contrary to Andrews' FALSE testimony that he would feel uncomfortable moving anyone from the table as his reason for leaving Richards in the back row, Andrews did not need to move anyone to the back in order to assign Richards a table seat.

Contrary to Andrews' false statement, "Didn't pay attention to protocol rules, I'm relaxed, T, V- V-XII, P.(s) 41-54 at P. , L. 12, Pl. Ex. 38, Andrews paid attention when Yakovac, the male Brigadier (BG), arrived to assume a newly created position, the first high level executive position for a TACOM Procurement Executive Officer, head program manager, "operational guy," responsible for the life cycle of TACOM's major systems, Id., February 17, 1997 seating chart. Andrews moved the Sergeant Major to the back.

"Operational guys" sat at the table. Compare, Beauchamp's FALSE testimony, demonstrating a stereotypical attitude toward a woman in Richards' position, "Principal staff officers were at the table, directors of the L. actions of the organization... ...the business of the command Ln 13... The Chief of Staff is a L. position, the only one of its kind.....FALSE He is head of Special Staff Business Center (BC);[no more a L. position than the Chaplain]; leaves the Chief Counsel out of the group, which has responsibility across the whole Command, [Chief of Staff is a BCH over the Special Staff Business Center... Does not play in the acquisition business processes. Other leaders were not operational. They provide services, supporting programs: executing contracts, supplying requirements /spare parts, maintenance logistics), developing technology for the operational program managers

Compare Andrews' inconsistent / contradictory, and FALSE testimony "I don't remember, when we did that (put the Sergeant Major at the table), the first few months that I got there in 1994 or not, so the Sergeant Major was put there."

Andrews' FALSE statement, Sergeant Major was always one of my key people to carry out my command duties. SM duties relate to enlisted soldiers... nothing to do with TACOM's business processes. TACOM's core competencies are tech generation, acquisition, and logistics. Compare, Andrews' Tes, Richards required to attend heavy discussions...wanted to make sure there were no legal problems. T, P., Ln(s) V-XII, P. (s) 93-104.

"Would feel uncomfortable moving anyone from the table as his reason for leaving Richards in the back row, "Andrews knew Richards was arriving, when he moved the Sergeant Major to the table, T P. (s) 123 Ln(s) 16-25-P. 124 V-XII, P. (s); Andrews did not need to move anyone to the back in order to assign Richards a table seat. Agency's seating chart during Caldwell's tour showed eight seats at the table, and later, nine seats, after Boyle a new SES in 2001 was required to attend the VTCs. Compare, Seating charts, Pl. Ex. 37; T, P. 16, L. 12). Pl. Ex. 38, V-V P.(s) 5-15: January 1996, April 1996, February 21,1997, JULY 13,1999, July 22, 1999, March 2000, August 2000, January 8, 2001, March 28 2001, June 26, 2001, November 2, 2001 and January 9, 2002,the VTC room new table, Room for three more seats (added for newly appointed male SESs 2000-2001. Andrews knew Richards was coming, when he placed the Sergeant Major at the table Protocol Officer, Jablonski Aff, V-VIII, P. 19; first VTC assigned seating chart, January 28, 1996, V-V P.(s) 5-15; Id RDecl ¶ 112; Compare Dep testimony, Andrews' changed reasons to" needed Sergeant Major at the table" in case he needed to tell him to go and do something for him during his deposition 2002, Dep, P., Ln(s), V- ?, P. . Richards' assigned seat, was closer, CG's civilian XO, would get him things. Andrews knew Richards was coming, when he placed the Sergeant Major at the table Protocol Officer, Jablonski Aff, V-VIII, P. 19; first VTC assigned seating chart, January 28, 1996, V-V P.(s) 5-15; Id RDecl ¶ 112; Richards was a Business Center Head(BCH), like her male SES and GO counterparts, Chief of Staff, Kirby Tes, recalls Andrews' decision, " that you were, in fact, going to be a separate Business Center (BC)," T, Pg 31, Ln (s) 5-13, T, 4-32, V-

XII, 191-220 ; ¶ 154, RDecl, V-III. Pl Ex 66; CG Caldwell Tes, "Absolutely, a Business Center Head (BCH)," when asked if he considered the Chief Counsel position a key position; V-XI, Pg(s) 150- 169, T 13- 92, Dep. T. (Oct 9, 2003). Pg 18, Ln(s) 22-24, Pl Ex 67, TACOM Legal Office Business Center, V-V Pg 2; TACOM Legal Office Business Center (Realignment), V-V, P. 3.Compare Dep testimony, Andrews' changed reasons from giving the Sergeant Major visibility (in that small room__STATUS_ to" needed Sergeant Major at the table" in case he needed to tell him to go and do something for him. During his deposition 2002, Dep, P., Ln(s), V- XI, Richards' assigned seat, was closer, CG's civilian XO, would get him things. Compare, Newberry Tes, advising him to ignore protocol, and seat who he needed at the table, T P. 37, Ln16-25and P. 38, 1-7, at V-XII(16 Id, , RDecl ¶ 126.V- III. Why didn't he assign Newberry to the back row? He had no experience with TACOM core competencies. Tech generation, acquisition, or logistics (he was in Resource Management before he was the "Deputy)."

Protocol officer, Jablonski, a GS-7, stood up to her boss, Chief of Staff, Kirby, and attempted to correct January 1996 before Richards' arrival, "It's wrong,' she was forced to redraw a seat assignment chart. Jablonski Aff, V-VIII, P. 19; First VTC assigned seating chart, January 28, 1996, V-V, P.(s) 5-15; Id RDecl ¶ 112; Jablonski Aff, V-VIII, P. 19; RDecl ¶s 140,-150, V-III. Andrews falsely testifies, Pl. Ex. 37; T, P. 16, Andrews' Dep T, P. 32, Ln(s) 14-25 P. 33; T P. 123, Ln(s) 16-20,V-XI, BCHs sat at the table (Richards was a BCH); Sergeant Major was not a BCH & no VIP rank, Id DA PP Code, V-IV.

Beauchamp FALSELY testifies, Counsel (Richards) is a special staff officer, (No she is not) P. 55, L. (s) 5-9, what other special staff officers were at TACOM? (IG, Safety, EEO, Small business...Not part of the L. actions. T P. (s) 98-100, V-XII, Compare Beauchamp falsely testifies, The Chief of Staff is a L. position, and the only one of its kind.....has a broad charter with lower level staff. Compare, Beauchamp's stereotypical view admitting, when he decided not to appropriately place Richards in the supervisory / rating chain, he compared her to lower graded "Special Staff", who worked for the Colonel, Chief of Staff in the Special Staff Business Center; - Newberry clarifies that there is a difference between personal staff and special staff, T, P. 60, Ln(s)23-24, P. 61, Ln 1, V-XII(16), P. 267.When you say "Special Staff, do you mean to place yourself and Richards on Chief of Staff Special Staff? P. 61, Ln 10, NO. CLEARLY NOT. Beauchamp FALSELY testifies Colonel, Chief of Staff, a Principal... SESers... Ln 13, [Chief of Staff, equivalent to a GS-15, is Head of the Special Staff Business Center. (Security, Chaplain, Personnel, Protocol Office, EEO, Safety.

Compare Beauchamp FALSE Tes, Col. Marcia Morgan, was sitting at the VTC table. , She was "Acting." Her name is not on any seating chart. Id. Seat Assignments Pl. Ex. 37; VTC Seating Charts. (s) 5-15. V-VI (A) P. (s) 5-15. Colonel Morgan cannot be the Director of the IMMC. It's a SES position. Just like Kalt sat at the table before seats were assigned, but after they were assigned he sat in Richards' assigned seat in the back), Morgan was "Acting, for SES Schieble, and it was not for "those years"...probably less than a year. See seating

charts. Morgan's name is no where. She was not the Director of the IMMC; Compare, Bradley Tes, T, 157-175, V-XII, Pg 117-136, Al Dawes sat at the table. Remember seeing Allan Kalt sitting at the table, when he was Acting Chief Counsel (before charts were made and at the back in Richards' seat after seats were assigned; ¶'s 144-146, P. 56, RDecl) Id seating charts; Richards sat in the back row." T, P. 166, Ln 23-25.

Beauchamp's false testimony, P. 59. He leaves the Chief Counsel out of the group, which has responsibility across the whole Command

"Other SESs were in the back row] [See charts... no other SESs assigned a seat in the back row].....no particular reason, P. (s) 55-60. V-XII

Spent $160,000 on travel, didn't notice where anyone sat;
Compare inconsistent false testimony attempting to persuade the court that he always wanted Verlyn at the BOD. "She was a principal." FFC T, P(s) 92-126 at 98-100, V-XII; RDecl ¶ 373.

Beauchamp did not just suddenly decide to place Richards at the table. EEO Counselor persuaded Beauchamp to move Richards to the table, V- L (19); Id, RDecl ¶ 6-9.and P. 46-50, ¶s118-128, V-, P. (s). Richards sat in the back row approximately 300 times from 1996- July 1999, through the June 7, 1999 contact with the EEO Counselor).

Compare, Newberry FALSE statements,, P. 47, 48, P. 50, Newberry denies any knowledge of Richards

assigned a seat in back row...Verlyn made it an issue; V-XII, 293-312, T, 30-106, Pg. 35, Ln 20-22, 36,Ln 25, 39, Ln 20, Met with CG to discuss where she would sit...P. 41, Ln(s)18-25, 42, Ln 4, Ln 18, 43, Ln(s) 1-25, 44, Ln(s) 6-11, P. 46,Ln(s)18-21. **Compare,** Andrews' Tes, Richards required to attend heavy discussions...wanted to make sure there were no legal problems. T, P., Ln(s) V-XII, P.(s) 93-104 to Newberry Tes, advising him to ignore protocol, and seat, who he needed at the table, T P. 37, Ln16-25 and P. 38, 1-7, at V-XII T, 30-106, V-XII, 293-312; RDecl ¶ 126. And violated DA Protocol Precedence Codes, (seat assignments). Newberry Dep Tes, V-XI, Pg(s) 207-322, T, 1-116. Proxies violated UCMJ degrading Richards personally and her position Article 133 Failure to behave as an officer and a gentleman, Excerpts 49th edition, Excerpts from, LTC E. BONN, USA (RET.), ARMY OFFICER GUIDE (49thed.). RDecl, ¶.35; Article 133. V-IV, P. 20

Acquisition Stand down Day, Schenk insults and publicly humiliates Richards in the auditcrium in front of TACOM TV camera, with all TACOM employees watching, May 1996, V-V, P. 16, /17.

Failure to assign Richards a seat at Source Selection meetings, when she was the advisor to the Source Selection authority, Burt Aff, April 26, 2001,V-VIII, P. 33; Pl. Ex 82; RDecl, V-III, ¶ 165, source selection;

Sept 1998, Group Picture, V-VI (A),.P. 17-18 RDecl Sept 1998, RDecl ¶171, Contrary to Defendant's assertions that I was asked to stand at the end of the row for the picture session, Defendant has "forgotten" my statement. When asked to join a picture taking session during Beauchamp's tour, I

was told to go and stand in the bleachers somewhere (with lowered ranked people). There was no chair in front available for me. None of the "gentlemen" seated in a chair, many lower in rank than I, offered me a seat. The Deputy to the Commander, a Civilian was seated in the middle. I refused to go to the back. I said, "This will be just fine" and stood at the end of the row where others were seated

March 2000 Luncheons, Anniston, V-V, P. 19; RDecl, ¶ 171, Richards' affidavit, Richards states, I was asked by ED Korte to accompany the Army GC and him to Anniston on or about 21 March 2000. The GC and Richards was the highest ranked people at the lunch; Korte's wife was ill. Seats were assigned for all attendees. Name "plates" was on the tables. My assigned seat was not at the head table. At the head table the following people had assigned seats: the Honorable Charles Blanchard, the Anniston Commander, Colonel Aaron Hayes, and the Chief Executive Assistant to the Anniston Commander, Jesse Poor (GS-15), the Chief Depot Counsel, Les Mason (GS-14), Colonel Demon Canner, and AMC Deputy Command Counsel. I was assigned a seat at the side table. I addressed the issue to. Jesse Poor, the Chief Executive Assistant to the current Anniston Commander, Colonel Hayes. He moved my nameplate to his assigned seat, which was at the end of the head table. I moved his nameplate and the nameplate of Colonel Canner so that I would be seated by the Army General Counsel. . Poor sat in the seat that was originally assigned to Richards. More Examples, Conferences e.g. CLE ¶172-176.

Those used to a military environment, at the level, where top leaders function, knew assigning Richards a seat in the back row with support people was illegal harassment. Disrespectful degrading and publicly humiliating, a "taboo." **P.?** Former Chief Counsel, Dawes, did not have to be present to know Andrews illegally discriminated against Richards by assigning her a seat in the back row of the VTC room. When Richards discussed it with him, he offered to come over and "Give them all hell." Dawes testifies, (Would you have a problem if you weren't sitting at the table?) T, 186,-11, It might have been to me, depending on why I wasn't sitting at the table, I suppose. I don't think I would have been sitting in the back because somebody was trying to denigrate my status. (Where did you sit?). Usually the Deputy, the Chief Counsel, the Comptroller, the PEO, if he was present, or if a specific briefer was on for the day sat at the table. T, 180,-21, at the front table, I guess you'd call it the front table. There was only one table and some chairs in the back. (Who sat in the back?) T, 181,-3, usually supporting people. (Who generally sat at the table?) T, 181, - 3, The, Deputy, the Comptroller, (Were there seating charts?) No, I simply took a seat. T, 180,-21, 186,-11 PL Ex 53, V-XII, P. (s) 193-209.

¶222 VIII. Disparate Treatment, Bringing On Board. SES Chapin testifies as to the stereotypical manner in which Richards was brought on board at TACOM as a newly appointed SES, TACOM's first high-echelon female, coming from outside the command. "When Verlyn came as an SES she took on a very difficult job. The legal job is tremendous. A new SES requires making an environment conducive to success. (See ROI, Tr. Enc. 6 P. 33, L.

(s) 16-22.) This was not done well. It is the Commander and his deputy's responsibility . . . to make this transition requires special attention, a special environment . . . special attention is needed for new SESs in the early months, P. 34, L. (s) 1-11. . . . there were different leaders when I became an SES . . . would have fallen on my face without their help . . . the same courtesy was not extended to Verlyn P. 34, lines 22-25. . . There were a million little things. It was not done well. ...she was not extended the same courtesy as Larry Schieble. The Deputy to the Commander has continuity between the s (tours run about two years).... I watched it done well for Dan [Mehney], Dan became an SES a year and some more before Verlyn.... Verlyn is the only female SES here. .... There were no efforts to bring Verlyn up to speed... Andrews did make comments pertaining to sex... he said things that he should not say profanity expressions could be offensive to some people... "Al Dawes sat at the table....agree that Al Dawes had an aggressive management style... Al Dawes was well prepared, knowledgeable, would not back down, and knew when to back down.... Al Dawes shared his view and guidance without being asked. (Id. P. 43), Verlyn had a different style but they were the same... Verlyn is well prepared, has the legal knowledge, says what she thinks, and does not back down.... is receiving the same great legal services now as he received when Al Dawes was here. (Id. P. 61, L. (s) 5-9).

Lewandowski. Tes, T P. Ln(s), V-XII, Very taken aback, to find Richards in the back row,) P. 84-85;, P.(s) 244-259, at P., I, affidavit, V-VIII, So disturbed she returned to her office, told other attorneys, and eventually told Richards, AFF I, V-VIII, P. 84-85; See

Lewandowski Declaration at Pl Ex 73; ROI My Doc., at Sexual Animus, § IV-45, Pl. Ex. 83 (D) at S383). Newberry's disrespect toward Richards in the VTC meetings. P.

AMC Senior Labor and Employment Law Counsel believes a high risk exists that a court will find illegal discrimination Mills' affidavit, Pl Ex 28, V-VIII, pg 20.

Soehren, Executive Officer to Jerry Chapin **testified** she believes it's because Richards is female, T P. 44, V-XII, P.(s) 361-377, at P.; Soehren Aff, V-VIII, P. 120; ¶ 216, RDecl, ". Richards would be the only SES who would sit in the back during those meetings (VTC)... In the back row one would find staff persons all except for. Richards; Remember that the Sergeant Major was put in the back until a few months ago, you (Richards) were only invited to the table if one of the assigned people was absent. Do not know where. Dawes sat... was not there then.... T, 33-40 at 38-39, Lines 23-25.; V-XII, 365-381

Fraud on the Court, Protected Activity
Fed Cir Buys In

Fraud on the Court, Reprisal,
AUSA's FALSE representations," "First Act"

Richards is similarly situated to male counterparts, member of the Senior Executive Service Corp (SESs) and General Officers (GOs), Business Center Heads (BCHs), on the TACOM Board of Directors (BODs), who did not engage in protected activity, in all relevant aspects of the situations, wherein she alleges disparate treatment. PA-selected for a DA SES position through OPM's merit staffing process, same executive requirements apply to all

members, The Office of Personnel Management (OPM) Guide to the Senior Executive Service (SES) pa v-ii, P. ; id, RDecl ¶ 109).

Reprisal AUSAs' false statements AUSA's action #1: Derogatory comments by Andrews and Kirby; pg 12, L. 15-19, "Plaintiff alleges that the man who hired her and selected her sometimes referred to her She never complained about the use of that language...pg 12, L. 16-25, that is the extent of the derogatory comment claims supposedly made by people in management; pg 13, L. 1. She does not allege that anything more than that was said by management ...P. 13, L. 6-11, doesn't allege inappropriate touching, or advances of a sexual nature.

6th Cir Buys In,

> "When Dawes retired early in the tenure of TACOM CG Edward Andrews, **Andrews reviewed the applications filed for the position and selected the plaintiff as the "most qualified" from a list of candidates**, a list that included Al Kalt, the individual who served as interim counsel in the position for more than a year.
>
> "Richards first asserts gender discrimination as a result of TACOM Chief-of-Staff Patrick Kirby **occasionally** addressing the plaintiff as "dear" arid "young lady," and Andrews referring to her at **various times** as legal gal,""legal girl,""little legal gal,""little legal girl,""my gut attorney,""my gal attorney," or "my little legal eagle." Although plainly less than professionall Kirby's comments can hardly be considered objectively

demeaning, harassing, or abusive. Furthermore, Andrews admitted in deposition testimony: "And I have a habit of saying "guys" and "gals." And I say, "my acquisition guy,""my legal gal" And I said, I don't recall her saying that, but it would not be out of form for me to say that, because 1 would say, "my TARDEC guy" or "my legal gal" or my "TARDEC gal," which is a mannerism that I have used for a long time. Andrews further testified that Richards never approached him about his use of the terms because, as he claimed, I would have stopped immediately if I thought that was bothering her." More disconcerting was hearsay testimony offered by Richards that, out of the presence of the plaintiff, Andrews once referred to bell curves on a chart as resembling "a pair of woman's tits" arid that the general spoke with other individuals "about women's body parts" in general, and Richards's body parts in particular. Such comments were clearly Improper arid have no place in a professional work setting. Nevertheless, nothing in the record before us indicates that they were anything other than isolated examples of boorish behavior."

Record Reflects

i. Richards is similarly situated to TACOM male counterparts, member of the Senior Executive Service Corp (SESs) and General Officers (GOs), Business Center Heads (BCHs), on the TACOM Board of Directors (BODs), who did not engage in protected activity, in

all relevant aspects of the situations, wherein she alleges disparate treatment. -selected for a DA SES position through OPM's merit staffing process, same executive requirements apply to all members, The Office of Personnel Management (OPM) Guide to the Senior Executive Service (SES) pa v-ii, P. ; id, RDecl ¶ 109).

i. **AUSAs misrepresent Andrews' false testimony that he hired Richards as true.**

ii. Andrews did not select the people who served on the interview panel, did not interview Richards separately, and was not the selecting official. See Newberry Dep. T., Pl. Ex. 38 at P. (s), 19-33. **Compare,** Andrews **commits perjury,**

iii. **"**The interview panel presented me with the best qualified candidates and I sorted through their records and decided, which one he wanted to be the Chief Counsel, Andrews' Dep. Transcript, Pl. Ex. 37, at P.(s) 19-20; RDecl, V-III, ¶ 77-78... "The ultimate decision in the Chief Counsel's selection process was by me." Dep P. 16, L. 9, par 73 P. 30-P. 35, ¶ 84; See FALSE Tes P. 19 L. (s) 9-16, 20.. Pl. Ex. 37; RDecl, V-III, ¶ 77-78.

iv. **Compare Newberry contradiction**

v. "Sorting through the applications to decide, who would be interviewed was not Andrews' option, V-XI, T, P. 32, L. (s) 21-25, P. 32, L. (s) 24-26, and P. 33, at P. 238. ¶ 76-77

RDecl. Andrews' Dep T, V-XI, at P. (s) 19-20; Dep. T P. (s), 19-33. A supervisor such as Andrews can only recommend a person for selection; "No choice but to recommend Richards. Interview panel considered Richards to be "head and shoulders" the best candidate for the position. Newberry Testimony at Dep T, at Pl. Ex. 38, P. 25 lines7-8); Letters of Recommendation, at Pl. Ex (s). 10-14); Newberry Tes, Was she the top candidate No question about it. Dep T Pg25 L. (s) 7-8; Andrews Dep. T, P. 20, L. 19, She was. (Top candidate);

vi. **Definition of immediate supervisor for this purpose is the Army Counsel (GC).** P. 9, Pl Ex3; Employment of Civilian Attorneys, Appointment Authority, AR 690-200, Pl. Ex. 37, ch. 213, 4-2. And 4-3, at P. 1, SJH Pl Ex 36. 37; ¶ 77-78,

vii. Richards' authority flows from Army Counsel (GC) Sec Army, SESs attorneys' appointing authority; GC, SES attorneys qualifying Authority) Employment of Civilian Attorneys, Appointment Authority, AR 690-200, Ch. 213, 4-2. Pg 1, Army Counsel is the qualifying authority. Id. Ch.213, 4-3, at Pg1;TAB C (10) OPM's Guide to the SES, Pg(s)170-187,at Pg(s); SES Selection Process, "Merit Staffing" V-IV; AR 690-200, Chapter 213, 4-2; 4-3, Pg(s) 167-169;

viii. **Compare, "Executive Review Board (CERB), SESers, evaluates the applications before they go to the interview panel.** First, the CERB eliminates ineligible candidates, I.e., those who do not meet the base standard for the identified critical criteria, "Management skills," and, if the applicant is not yet a SES, "technical competence." Then the CERB evaluates the remaining applications, arriving at a consensus as to the score on each criterion, including critical and non-critical criteria; totals the scores; arrives at a cut off score as to which candidates are among the qualified; depending on the number of applicants, rank orders them; and identifies who they believe are the best qualified. This list is given to the interview panel, which is made up of other SESers. The interview panel identifies the candidate, which it will recommend for selection; know all of this from personal experience, as I have served on this Board. "RDecl ¶ **82,**

ix. No choice but to recommend Richards. Interview panel considered Richards to be "head and shoulders" the best candidate for the position. Newberry Testimony at Dep T, at Pl. Ex. 38, P. 25 lines7-8); Letters of Recommendation, at Pl. Ex (s). 10-14); Newberry Tes, Was she the top candidate No question about it. Dep T Pg25 Ln(s) 7-8; Andrews Dep. T, Pg 20, Ln 19, She was. (Top candidate);

x. Andrews "body part comments were far from hearsay. See predisposition to discriminate, P.

xi. UCMJ finds Kirby's and Andrews' comments degrading and subject to punitive provisions. See **P.??**

xii. "SES heads of TACOM organizations, who gave testimony, did not recall General Andrews ever addressing or referring to them as my little procurement guy (Mr. Mehney), my deputy dog (Mr. Newberry), or my little research guy (Mr. Chapin). They testified that if he had referred to them in that manner, not only would they have remembered they would have been bothered by it. I felt insulted, embarrassed, and humiliated. Pl. Ex(s).71, 72 and 44],

SES, Chapin testified: (Recall ever being addressed as my little research guy by General Andrew?)' No.' if I had I would remember .If I had it would have bothered me. ..."General Andrews treated me with a great deal of respect." (Do you recall ever being addressed as my little research guy by General Andrew) No, if I had, I would remember... if I had, it would have bothered me. (Chapin, Testimony, TR. ROI, Enc...at ENCL.??) -XII, 271-292, T, 123-142, at 138, 139 Ln(s) 1-7,

xiii. **SES, Mehney testified,** "Not referred to as little procurement guy)) (If he had he would have remembered and it would have bothered him)

xiv. **SES, Newberry testified, not referred to as Deputy Dog."** V-XII, T, Pg 75, Ln 2-8. See RDecl, ¶186

xv. **Soehren testified, Perception that Beauchamp did not hold Richards in high regard** "just on observations in general, as well as one specific staff meeting where I recall Bacon sitting in for Richards. "I want to see her whether it's today, tomorrow or even on the weekend or it may have been Saturday...

xvi. **Newberry degrades and defames Richards to the BCHs during executive meetings in the VTC room and teleconference in his office.**

xvii. **Soehren testified,** Newberry made the comment (when Richards was late for an executive huddle) to the effect that because of your absence, that Verlyn was not reliable or dependable. Those are the words that come to mind, or can't be counted upon. (Id., Enc. 5, and Page 40, Lines 10-13: My estimation would be that it (the relationship of Newberry and Richards) was probably not a good relationship where a lot of respect was shown for your position. From my observation you were not a favored SES... (Id. Enc. 5, Page 91-95, Lines10-25, Page 95, Line 2). My personal opinion is that it (being a woman) probably does have something to do with the way he treated me. (Id. at Line 20). Disrespect as a chief lawyer, as an SES and as our senior female SES. (Id. Page 97).

, Pl. Ex.72 at 36-40 and 91-92). (See Pl Ex. 72; Page 36, Line 8-9),

Chapin testified, Have heard adversarial remarks made about. Richards... one example was during General Beauchamp's executive huddle, a meeting that took place in Newberry's office with the senior staff... Verlyn was not there... Newberry commented on her undependability... she was slightly late because of a fender bender that we can all have at times... V-XII, Pg(s) 137-171, T. 28-61 at page 45; Pl. Ex. 13.

Newberry refuses to assist her when she informed him that the Chief of Staff, Pankey had walked away from her when she was attempting to discuss relief from the hiring freeze with him, and testifying that maybe he needed "to go to the potty."

Newberry's email to Richards that she wouldn't get anything unless she went through him, despite not being her supervisor.

Chief of Business Law, Lewandowski testified, "In the VTC they were going through the leaders' travel plans. I was appalled that Newberry made a comment on Verlyn's TDY plans. She was listed for one trip, a Chief Counsel's meeting scheduled for a class following the meeting. All the other leaders were going on many trips to everywhere. Newberry made a comment only about Verlyn. It was his tone of voice that really got me. I would not use as strong a word as animosity. I would say that his tone was one

of disdain...lack of respect. He stated, "Verlyn's going on TDY.... We'll see about that." (See Declaration, Pl Ex 73; ROI My Doc., at Sexual Animus, § IV-45, Pl. Ex. 83 (D) at S383). V-VIII, page 32. "It seemed totally inappropriate for him (Newberry) to question this relative insignificant travel. It was the only trip she was taking during the period being briefed and so many other SESs were traveling extensively during the same period. I don't remember him questioning any of the other travel being briefed. Not only was it what he said but how he said it. The obvious implication of his tone and cadence was, 'How dare she...I'll show her.' This treatment of Richards really shocked me. It was like she was an errant child instead of the Chief Counsel. I remember thinking that nothing like this would have ever happened to Al Dawes, the previous Chief Counsel. This incident left such an impression on me that I told at least two people when I got back to my office and even though I did not know her real well at the time, also relayed the incident to Richards about a week later. It was then that she started telling me about the problems she was having and we had many discussions on this matter since I became Chief of the Business Law Division. An attitude had spread toward the legal office that was not there when Dawes was Chief Counsel." (See Lewandowski Affidavit, ROI My Doc., at Sexual Animus, § IV-45, Pl. Ex. 83, at S383). (See Senior leaders travel calendar ROI, Plaintiff's Documents, § IV, Animus, Pl. Ex. 83; T, 3-18 V-XII, 253-270.

Chapin testimony,
"Have heard adversarial remarks made about. Richards... one example was during General Beauchamp's executive huddle, a meeting that took place in Newberry's office with the senior staff... Verlyn was not there... Newberry commented on her undependability... she was slightly late because of a fender bender that we can all have at times... V-XII, Pg(s) 137-171, T, 28-61 at page 45; Pl. Ex. 13.

Soehren testified, "Newberry made the comment (when Richards was late for an executive huddle) to the effect that because of your absence, that Verlyn was not reliable or dependable. Those are the words that come to mind, or can't be counted upon. V-XII, T, and P. 40, Lines 10-13: My estimation would be that it (the relationship of Newberry and Richards) was probably not a good relationship where a lot of respect was shown for your position. From my observation you were not a favored SES...Page 91-95, Page 95, Lines 2, 10-25, my personal opinion is that it (being a woman) probably does have something to do with the way he treated you- Line 20, disrespect as a chief lawyer, as an SES and as our senior female SES. (Id. Page 97). Soehren testimony, Pl. Ex.72 at 36-40 and 91-92). (See Pl Ex. 72; Page 36, Line 8-9),

Newberry's email to Richards that she wouldn't get anything unless she went through him, despite not being her

supervisor....Refusing to assist her when she informed him that the Chief of Staff, Pankey had walked away from her when she was attempting to discuss relief from the hiring freeze with him, and testifying that maybe he needed "to go to the potty.".

.discriminatory award policy / failure to appoint Richards to TACOM's senior level board for approving awards over $5000 to any Tacoma (Caldwell reviews history and award process after reading Wynbelt's affidavit,

i. The Fed Cir / Board adopted the agency representative's misrepresented argument that "res judicata applies to Petitioner's discrimination claim." failed to carefully examine and allot weight to events April 15, 1996- October 16, 2004, when the district court erroneously granted summary judgment to Defendant,

ii. The AJ "overlooked" Richards' allegations of duress, misrepresentation, coercion, violation of agency regulations, and statute with direct nexus to Richards' terms of employment, serious illnesses, and supporting evidence, which establishes Richards was left without free choice from 1996 to the present and her retirement was involuntary

iii.

iv.. "[At times I used colloquialisms continually... like my legal guy or my procurement guy." Only remembers referring to Dawes as guy (not little guy). Do not recall having made derogatory comments about Verlyn. Would not put her down intentionally.

Don't feel I treated her differently. Kid around with just about everybody. Do not recall referring to Verlyn as his little legal eagle in a morning "Huddle." If so, I did not mean it to be derogatory. **Do not agree that I referred to women's body parts. DISAGREES I WAS DEROGATORY ABOUT WOMEN. THOSE PROTOCOL RULES DON'T MEAN A LOT TO ME.** I'm relaxed. ROI, Enc.2, V-XII, P.132, .L(s) 4, 11, 15 and 20; page 133, line 13; page 136, line 2 and page 141, line(s) 16-21).

i.

ii. **Andrews' Tes, T, Pg 137, Ln(s) 15-21.** Can't recall...may have...it would not be done in a derogatory way, T, Pg(s)135, Ln 8 and 13,V-XII, Pg(s) 1-16, 118-177, I don't recall...it wasn't done to demean you...) to Andrews Dep testimony, admitting inappropriate in military environment, Dep T, 3-75, V, XI, Pg(s) 83-101 at Pg.65, Ln(s)18-20. TO Andrews admitting inappropriate in military environment, Dep., Pg.65, Ln(s)18-20, Dep T, 3-75, V, XI, Pg(s) 83-101 T, 118-177, V,XII, Pg(s) 1-16.

(See UCMJ Article 133) (Failure to behave as an officer and a gentleman); The Army Officer Guide, 49th edition, LTC E. Bonn, USA (Ret.), "Taboos," excerpts The Army's Officer guide, page 2, at Pl Ex 18).

AUSAs Fraud on the Court; Richards repetitively engaged in protected activity to covered entities, V-IV, EEOC Compliance Manual 5/20/98, §8, B, V- C (2) page(s) 11-19,including "Proxies," TACOM CGs the significant named participants in the illegal discrimination, requesting correction; agency

lawyers from 1996 to the present; (CGs), Richards' supervisors, initial and senior raters, and Agency lawyers, AMC Command Counsel, SES, Edward Korte, Labor and Employment law attorney , Mills. And others.

i.RDecl ¶133. Protected Activity (Manifest Indifference) (Andrews, April 22, June 10, and December 6, 1996) RDecl, V-III, ¶s 3-4, ¶ s 128, 135,-139; June 10, 1996 to Andrews, Id RDecl, ¶ 245, January 1996, ¶ 134-136;. See EEO Counselor's Informal Report (Oct. 6, 1999), EEO Complaint Chronology, Richards states,

> "April 22, 1996, I complained to Andrews about my back row VTC room seat assignment. It was our first one-on-one discussion. I told him my seat assignment was inappropriate. I did not use the word "discrimination" at that meeting, because I knew that, although it was true, that label would spark a more litigious feel than simply the need to address a protocol matter. I did, however, tell him that I was the only women at my level and all the male SESers who were required to attend, sat at the table. I told him that I was the only SES female. I attempted to be tactful, saying it was important that I sit near him, as Dawes had, to be available to advise him. I said I did not believe I would be treated this way if I were a man. I told him that I knew that Dawes had always sat at the table. I also, in my attempt to be tactful, told him that I needed to sit close to him in case I needed to advise him. I said I was not being given the same respect as my peers. This came back to haunt me, later. (See infra Goldsmith's assignment to "guard" the Sergeant Major's seat in the VTC Room from me). He refused to seat me at the table. (See, T. page 55. Andrews

responded by stating, "[I]f I put you at the table, people will think it's because you are a woman." Instead of correcting the problem, he demonstrated his "sexist view of me." **He told me to go to "Doug" Newberry when I had concerns, as if Doug would comfort me, the little girl.** (See id.) I suggested that maybe people would think it was because I was the SES Chief Counsel of the Command, and I should not be treated differently than my male predecessor. I said that I was an integral part of the executive group, as he had previously stated during that very same meeting. **I told him that my job was to give both legal and business advice,** related to all the Command's business and to represent the institutional interests of TACOM and the Department of the Army as a whole.

Andrews Acknowledged Awareness.

Andrews admitted his failure to correct seating arrangement in the VTC room was not going to be because I was a "woman."

> "I had more than one discussion with the Chief Counsel, two or three. Two months after the first discussion there was another discussion. She said that she was the senior woman in the Command. I told her, I don't want to put you at the table just because you're a woman. Chief [Chief of Staff Colonel Patrick Kirby] and my Deputy [Douglas Newberry] also brought it to my attention. Two months after the first discussion there was another discussion; that Verlyn mentioned the Staff Sergeant Major as the person who should be moved. **I felt uncomfortable moving anyone from the table;** that it was left that way. I would not

move him. **I talked a lot with Doug about it. I told her to go to Doug when she had concerns. I gave Doug Newberry as much power as I could.** Doug and my Chief of Staff, Patrick Kirby, brought it up to me in huddles. They brought up the fact that Verlyn was still unhappy. I let the issue lie. In my last discussion with her on the subject, I still held fast to not seat her at the table... It was left that way. I would not move him. I did not feel it was necessary to move her to the table. **When Yakovac came in he was the Deputy in charge of all PMs, a Business Center Head. At that time, I moved the Sergeant Major to the back row.** I now realize that it was extremely important to her." (Pl. Ex. 56; (Feb. 1997), Id at Pl Ex 51) EEO Counselor's Informal Report (Oct. 6, 1999), Pl. Ex. 57; EEO Complaint Chronology, Pl. Ex. 58. V-, V-XII. (1), page(s) 41-54, at page; T page, Ln(s)) page(s) Id RDecl, 178-229. Compare, Yakovac was a Colonel Promotable. A Brigadier General position is equivalent to Richards. **Andrews retaliated within days. See AUSA's 'first, P. third, P., and eighth action.**

ii. Korte testified,

"Had received telephone calls from Verlyn. She had raised the issue of high grades, See rejection of AMC CG's offer of high grades for the legal office ¶ 20, V-III, RDecl, the issue that she should be seated at the head table with the Commander. She had raised the issue of her relationship with Doug Newberry She had elevated the issue that she should be seated at the head table with the

Commander, of how she was treated with disrespect by not being allowed to sit at the table in the VTCs. She was made to sit in row at back of the room. Linda Mills never discussed her concern that Verlyn was being treated in a disparate manner with me. When Verlyn believes in something she is very persistent. Verlyn had raised the point that, in the past, the former Chief Counsel Al Dawes was at the table." V-III, RDecl, ¶ 128, Korte Tes, T page 50, Ln 11,V-XII, page(s) 213-235; RDecl, ¶ 222, V-III. MAY 1996 CLE; protected activity continues to Korte, RDecl, and ¶ 223-226 pages 92-93.

Richards continually protested to Mills, EEO lawyer in the AMC office of Command Counsel, who protested to Korte on Richards' behalf, after Korte refused to assist Richards.

iii. Mills protested to SES, Korte a number of times, to no avail, Mills Aff, V-III, page 20, and **Korte's FALSE Tes, that she did not discuss it with him; Id,**

ProAct to Beauchamp Id, RDecl, Pg(s)138-141, ¶:s352-363 Pg 142, ¶36;¶354 Id RDecl) (R-Richards Tes TR, Enc. 1, Pg 18, Ln 9-15,17, 20-21,24-25, Pg19, Ln(s)22-25, Pg 20,Ln1,3-6, After Richards engaged in protected activity to Beauchamp, February 2, 1998 and August 12, 1998. Richards' Pro Act, RDecl TAB E (2), Pg 3-5 ¶s, 3-4,) he retaliated within days. See AUSA's first action; third action sixth action During Richards' February 2, 1998, mid- year review she engaged in protected activity to Beauchamp: _MEADOW BROOK HALL BOD MEETING FEBRUARY 19, 1998. Richards states, "I had a conversation, did not talk to Beauchamp early in his tour about seating. I found it very difficult to bring the subject up because I felt that I had really been burned by bringing it up to Andrews., so I did not bring the subject of seating up, I don't believe—L. 17: until my mid-year review, February 2, 1998. Enc. 1, P. 18, L. 20-21, and you brought up the VTC again? Yes. Enc. 1, P. 18, L. 24-25, P. 19, Lines 1- At that same time, I discussed rating, I said that I believed it was disparate because. Mehney had been asked to consolidate the acquisitions, the three site acquisition centers in to one, and that he was rating off-site people... I said I thought it was disparate because Dawes, the former Chief Counsel, was already the senior rater, the initial rater, and the immediate supervisor of the Rock Island lawyers, and that I had, as one of my objectives, to continue the transition that . Dawes started before he retired March 1995, and by that date (February 2, 1998), nothing was done with relationship to rating. P. 19, lines, 22-25, P. 20, lines 1; I spoke to Beauchamp again, before I left for sick leave...long term sick leave, May 6, 1999. Enc. 1, P. 20, Lines 3-6, When I returned from sick leave, we

talked again. At that time, he knew that I had given my notice of intent to file an EEO complaint. Those are some definite times that I can recall. By February 2, 1998 I knew that I would not be sitting in a table seat in the VTC room, despite my very sufficient protest that I believed that he was illegally discriminating against me, to Beauchamp, using the words disparate treatment and similarly situated. He had already reneged on his commitment to place me in the rating chain of off-site lawyers, and triggered egregious a perfusion of FALSE testimony greater than I could ever have imagined. During my February 2, 1998 mid-year review. I once again engaged in protected activity by giving Beauchamp notice that I believed he was discriminating against me, as compared to my similarly situated male counterparts, SESs and Officers, by inappropriately assigning me a seat in the back row of the VTC room, and by failing to authorize me to supervise and rate my off-site attorney. **I discussed my VTC room seat for the first time, at my February 2, 1998 mid-year review, extensively when I was having my August 12 1998 appraisal review.** I told him I should not be made to sit in the back row of the VTC room. I discussed it and everything else on May 6, 1999, on my last day prior to my taking five weeks sick leave. I asked Beauchamp to correct this adverse action (initiated by Andrews in January 1996 a number of times. I had hesitated to say anything to Beauchamp when he started his tour, about the seating arrangement because I felt so burned after notifying Andrews within weeks of assuming my duties, in June 1996, when I went over my objectives, during my mid-year review, December

1996. I told Beauchamp that I was not being treated the same way as those similarly situated to me I discussed this with a number of times. He instead continued to do other things that made my job more difficult... At first, as with Andrews, I did not use the word discrimination with Beauchamp. I did use the phrases disparate treatment as compared to men similarly situated. I told Beauchamp that I was not being treated the same way as those similarly situated with respect to seating assignment. He responded by saying SESs sit in the back at AMC Headquarters, when they attend VTCs. I said, yes, all SESs and Officers sit in the back at HQ unless they are briefing. They are treated the same. At TACOM, SESs and GOs sit at the table. He did not get it. I told him my VTC seat assignment was a very strong message to all that I was not to be treated as other SESs. He said, no, it wasn't. He refused to correct the VTC seating arrangement. Do anything about it.

ProAct to Beauchamp,

Richards testified, Enc. 1, P. 18, Lines 9-15, L. 17: mid-year review, February 2, 1998. Enc. 1, P. 18, L. 20-21,

> "And you brought up the VTC again? Yes. Enc. 1, P. 18, L. 24-25, P. 19, Lines 1- At that same time, I discussed rating, I said that I believed it was disparate because Mehney had been asked to consolidate the acquisitions, the three site acquisition centers in to one, and that he was rating off-site people... I said I thought it was disparate because Dawes, the former Chief Counsel, was already the senior rater, the initial rater, and the immediate supervisor of the Rock Island lawyers, and that I had, as one of my objectives, to continue the transition that

Dawes started before he retired March 1995, and by that date (February 2, 1998), nothing was done with relationship to rating. Enc. 1, P. 19, lines, 22-25, P. 20, lines 1; He retaliated within days by removing Richards as a Director on the Board of Directors without informing her, and many acts

"FRAUD ON THE COURT,"MULTIPLE FALSE STATEMENTS UNDER OATH (Beauchamp, Newberry, Goldsmith and Pankey (Newberry "spills the beans" four years later)

AUSA'S SIXTH MISREPRESENTED 'ACT.' Excluded from the Board Of Directors at TACOM (February 1998, pg 19, L. 6-25, Claims she was excluded from the board of Directors (BOD) at TACOM created by Beauchamp, second cg. Really the only meeting she complained she was excluded.... His top people...she was invited....attended every board meeting...was fully involved... not given any documents. Beauchamp corrected it immediately that she would never again not be given all the papers that everybody else was given. She was allowed to participate fully and completely in all BOD meetings.

6th Cir buys in,

The AUSA knew or should have known Beauchamp's, Newberry's, Pankey's, and Goldsmith's testimony addressing Beauchamp's removal of Richards from the TACOM Board of Directors was FALSE. Schmidt, the JAG attorney assigned to assist the AUSAs, was assigned to defend the government during the administrative process prepared proxies for the "neutral "Fact-

finding Conference (FFC). This was contrary to EEOC regulation. In the alternative did Beauchamp and Newberry conspire to make FALSE statements and influenced Colonel Pankey and Goldsmith to do the same See Part XIII, Meadow Brook Hall off-site BOD meeting, stereotypical, pretextual, FALSE, inconsistent, and contradictory testimony, ¶ 364 to ¶447, SJ RDecl, V-III.

Beauchamp's removal of Richards from the BOD in reprisal for protected protests, February 2, 1998, RDecl, ¶¶ 354 -363, T, P. 18, Lines 9-15, within days of the Meadow Brook off-site Board of Director's meeting, February 19, 1998, and failure to inform Richards that he was withdrawing her authority to continue as a BOD member before the BOD meeting intending she would be publicly humiliated is one 'act' within the category, Exclusion from Meetings.

Richards testified, "I had a conversation, did not talk to Beauchamp early in his tour about seating. I found it very difficult to bring the subject up because I felt that I had really been burned by bringing it up to Andrews., so I did not bring the subject of seating up, I don't believe—L. 17 until my mid-year review, February 2, 1998. Enc. 1, P. 18, L. 20-21, and you brought up the VTC again? Yes. Enc. 1, P. 18, L. 24-25, P. 19, Lines 1- At that same time, I discussed rating, I said that I believed it was disparate because. Mehney had been asked to consolidate the acquisitions, the three site acquisition centers in to one, and that he was rating off-site people... I said I thought it was disparate because Dawes, the former Chief Counsel, was already the senior rater, the initial

rater, and the immediate supervisor of the Rock Island lawyers, and that I had, as one of my objectives, to continue the transition that Dawes started before he retired March 1995, and by that date (February 2, 1998), nothing was done with relationship to rating. P. 19, lines, 22-25, P. 20, lines 1.

Beauchamp retaliated before the February 19, 1998, off-site BOD meeting (Meadow Brook Hall) Andrews' BOD charter, Chief Counsel 4th on list). Nov.97- Feb. 4-6, 98 emails to BOD members announcing. The fourth BOD meeting, P. 4. February 19, 1998 BOD, Bradley, Aff, V-VIII, P... 16.

Contrary to Beauchamp's testimony that he never knew there was a problem, he learned after the fact that the Chief Counsel was angry because she was refused charts, Beauchamp planned to embarrass Richards when she arrived at the off-site, knowing that there would be no briefing charts for her.

Beauchamp made his decision to withdraw Richards, the sole female BOD member, shortly after her February 2, 1998 midyear review, and before the February 19, 1998 off-site.
Newberry, Goldsmith, and Bradley were aware that the February 4-6 e-mail messages listed Richards as an attendee and knew that Richards was planning to attend the off-site. (See emails (11-14-97); 11-26-97, 1-14-98; 2-04-98; 2-05-98; 2-06-98 showing that as late February 6, 1998 , four days after engagement in protected activity, even Newberry's XO still believed she was a BOD member, ROI My Doc, Animus, § IV-24, , P. 335; §

IV-25,P. 338; § IV-26, P. 340; § IV-28, P. 346; §IV-29, P. 347; § IV-30, P.348) (See also IV-31, P. 349, IV-32 Bradley Declaration, and P. 351.

Pankey, who planned the meetings, and his subordinate, Goldsmith, sent CC messages addressing details of upcoming "Beauchamp" BOD meetings, including the Meadow Brook off-site to BOD members, including me, and other attendees. (E-mail messages dated February 4, 1998 and February 5, 1998 (Newberry's executive officer, Jane Erb to Richards' executive officer Dogwill, Richards to Dogwill, Dogwill to. Erb, Erb to Goldsmith, not only list Richards as a BOD member and an attendee, but also address such issues as, whether Richards could drive her own car, or whether she had to take the bus, cost of the lunch, location of the meeting, the fact transportation will be provided.

Beauchamp implemented his decision to remove her after the February 4-6 email messages listing BOD members, including Richards as attendees. Beauchamp made a list of BOD members who were to attend, left Richards' name off the list and gave it to Colonel Pankey, Chief of Staff, in Newberry's presence and informed him he did not want the Chief Counsel to be a BOD member He also told him that the reason he left Richards' name off the list was because he determined he would no longer be including Richards as an invitee to BOD meetings. No one informed the Chief Counsel that she was no longer a member, and was not to attend. See Newberry testimony, March 2004 Dep, ". (Was there some reason that you knew of that the general didn't want. Richards, the Chief Counsel, at a Board of Directors meeting?) The only

thing I know...and again, I would have said it preceded this particular situation that somehow that issue came up to Beauchamp. And his comment to his Chief of Staff, and I guess I was there, or the chief came and told me, but somehow I was made aware of it, is that Beauchamp had said I will determine when I need the Chief Counsel. I personally. She works for me. I will determine." I didn't go in and argue that at that point, and I'm not certain how I learned all that. To my knowledge in this meeting that we've just spoken to was the first time this thing erupted for somewhat more public debate. And prior to that. Richards had attended the board of directors meetings and there were no problems about her attendance or whether she would receive charts... "Dep, T 1-116, V-XI, Pg(s) 207-322.

Richards' witnesses establish the falsity of agency witnesses' testimony. Richards' actions (confirmed by three witnesses who saw her shortly after her experience at the BOD) support her contention that Newberry told her after the morning break that Beauchamp told him that he was angry because he had not invited her to the BOD meeting. See testimony and sworn statements of the Deputy Chief Counsel, Bacon, Richard Bradley, Darlene Dogwill, Martha Soehren and Louise Lather confirming Richards' statement as true, and that Newberry, Beauchamp, Pankey and Goldsmith made false statements as to what was said between them at the morning break. Two witnesses from Richards' office confirm Richards was extremely upset following the off-site because she believed that she had been removed from the BODs and felt very humiliated by her experience.

Richards states (sworn statement), After the break Newberry returned and told me that he had told Beauchamp that the Chief Counsel was angry because she was not given charts...He told me that the CG responded with " Well I 'm angry because I did not invite the Chief Counsel to the BOD meeting". According to Doug, the CG also said. Why do I have to invite the Chief Counsel when I don't have to invite all my SESers? (The SESs not invited work under Chapin in TARDEC and under Arbuckle at ARDEC. And Arbuckle were in attendance). I was as upset as I had ever been since my arrival at TACOM. I made it through the day and then headed for a friend's house in Rochester. She was not home, so I went to a pay telephone to telephone my Deputy. I could not get hold of her so headed back down to I believe I attended two or three BODs prior to the one scheduled out at the Meadow Brook Hall in Rochester.

Bradley testifies, "Supervisor was Goldsmith; the basis for not making the Chief Counsel charts was a direct order from Colonel Pankey to Goldsmith, my boss. Colonel Pankey gave this direction to both my boss Goldsmith and me. The Chief of Staff, Colonel Pankey, told me that the reason for not making the Chief Counsel charts was because she was not considered invited by the CG. The Chief of Staff, Col. Pankey had related that information to my supervisor, Goldsmith, and me. It was my responsibility to have materials for attendees. Prior to the meeting packages were prepared for all attendees except Richards, per direction from Pankey. I was ordered not to provide charts to her (Richards). On the day of the event Richards was not given a packet of information and to my

knowledge was not asked to leave. I was ordered to not provide charts to her. I had been instructed NOT to provide a copy to her (Richards). The rational that I was given was that she was not an *invited attendee. Every attendee* was given a package except Richards. Moreover, information, before the meeting did contain her name as an addressee. (E-mail). I knew that the Chief Counsel was an attendee. Prior to the meeting she was listed as an attendee (on E-mail messages). No idea who would have directed Colonel Pankey, the Chief of Staff to direct us not to make charts for Richards. Copies were made for all attendees, except Richards, per instructions provided.

SES, Chapin_testified, (See ROI T, P. 57, L. 9, at Pl Ex.70), "I don't know the detail, any knowledge whatsoever of how that event took place, or who gave directions for that to happen, ... I just know that there was some discussion of whether or not you (Chief Counsel) would be part of that organization (TACOM Board of Directors) (BOD), or not, and one particular meeting there (Meadow Brook Hall of-site) they weren't prepared that you were going to be there and you were, and so when you're sitting there and there was a discussion back and forth and since they hadn't prepared for you being there, I shared my chart."
Bacon testified, "I remember them (Chief Counsel's Administrative Officers) gathering papers that showed that you had been invited to the Meadow Brook off-site. (, T, P. 76, L. 8); Bacon testified, P. 75, L. 5, Yes, I remember that. (Recalls Chief Counsel returning to the office at the end of the day of the Meadow Brook off-site because she was very

upset). (Id. at P. 75, L. 14). I remember you being very upset. (Id. at 75, L. 9), Yes I do (Recalls the Chief Counsel telling her that she was refused charts). (Id. at 75, L. 20).

Dogwill, Chief Counsel's Administrative Officer states: (Notice to Dogwill about Beauchamp's discriminatory actions at the Meadow Brook off-site. (See sworn statement submitted to the AJ, May 18, 2001 as an additional basis for sanctions against the Agency). On February 20, 1998, the Friday morning following the Meadow Brook off-site Board of Director's (BOD) meeting. Richards told me about, what she described, as very disrespectful treatment accorded her at the BOD meeting. I recall that she told me that at the BOD meeting Newberry had told her that Beauchamp had told him that he (Beauchamp) had not invited her to be the BOD meeting. She told me that she had been so upset that she drove back to the office the night before to discuss what had happened with the Deputy Chief Counsel, Bacon. I was surprised that she had come back because she lives in the opposite direction. She was very upset. Richards asked me to look through all the E-mail messages related to prior BOD meetings and particularly the Meadow Brook BOD because she wanted to prove to Beauchamp that she had been invited. She told me that she was the second BOD member to arrive and that she had been refused briefing charts. I assisted Richards in searching for the E-mail messages that documented the fact that she was an invitee according to these messages, not only to the prior BOD meetings, but also to the Meadow Brook meeting on February 19, 1998.I found past E-mail messages documenting the fact that she was

a member of the TACOM Board of Directors, and was included on the invitee list for all of Beauchamp's Board of Director meetings (about three) before the Meadow Brook off-site BOD, and for the Meadow Brook meeting. Richards did attend these past BOD meetings and within my knowledge there were no incidents such as telling her she was not a member and not an invitee or refusing to give her briefing charts. Dogwill Decl. Submitted to the AJ, May 18, 2001),

Martha Soehren, Recall Richards had a very negative experience at a BOD meeting. Recall discussion by a couple of folks about you (Richards) attending a BOD meeting, but you were not provided handouts. You were apparently told by leadership that you were not an invitee to the meeting. . Told by others that the reason. Richards was not given charts was because she had apparently not been an invitee and believe my boss Jerry Chapin offered to share his charts with you. I also recall a discussion with you that same week, about how the incident was handled with you and how insulting it was to be treated in that fashion. The effect was not limited to that particular BOD meeting. It would affect all the BODs that followed. . (ROI, Enc 2, P.s 96-108, Pl. Ex.72), (See Soehren affidavit, V-VIII, P. 62. ROI, "My Doc.," at Animus, § IV-46), P. 385)

Louise Lather Chief of Integrated Acquisition Function TACOM Corporate Management states, (See October, 1999 sworn statement, Richards' Documents at Animus, Section IV)...Verlyn and I have gone out to lunch probably on average of one to two times per week since she has returned to TACOM, Some of the situations I remembered

her telling me about as they were happening are: Verlyn was included on the addressee list for Board of Director meetings and invited to those meetings. Once when she attended, she was provided no charts. She asked Doug about that and he asked the CG who allegedly responded to Doug that "he didn't invite her." Affidavit, V-VIII, P. 10.

Richards' states (See sworn statement at Richards' documents. Animus, section IV),Soon after MG Beauchamp's arrival (August 1997), he told a group of us (essentially BCHs, the Deputy, the Chief of Staff and myself) that we would be forming a Board of Directors and would be meeting once a month.

BEAUCHAMP AND NEWBERRY MADE FALSE STATEMENTS ABOUT THE EVENTS RELATED TO WHAT HAPPENED AT THE OFF-SITE BOD, INCLUDING. WHAT WAS SAID BETWEEN THEM AT THE MEADOW BROOK HALL OFF-SITE TO AVOID ACKNOWLEDGING IN TESTIMONY THAT DURING THE MORNING BREAK, NEWBERRY TOLD BEAUCHAMP THAT THE CHIEF COUNSEL WAS ANGRY BECAUSE SHE WAS NOT GIVEN CHARTS, AND THAT BEAUCHAMP'S RESPONSE TO NEWBERRY WAS HE WAS ANGRY BECAUSE HE HAD NOT INVITED THE CHIEF COUNSEL TO THE BOD MEETING

Beauchamp did not want Richards informed of her removal from the BOD in order to inflict Richards with embarrassment and public humiliation at the BOD meeting. Beauchamp was aware that he was publicly humiliating Richards at the BOD yet he did nothing to assist Richards nor did he admonish his Deputy for failing to make sure every one had charts Beauchamp could not help but notice that Richards had no charts. The number of BOD members was small (Deputy, Chief of Staff, Deputy for Systems Acquisition, Director of the

Acquisition Center, Director of ACALA, Commander of ARDEC, and the Director of TARDEC; Deputy Director of Resource Management).and the Chief Counsel. One does not need to stretch the imagination to assume that Beauchamp sat at the table with Newberry, Richards, and the other BOD members, during the all day meeting. (Undisputed that no correction was made out at the site to give Richards briefing charts, despite the awareness (acknowledged in testimony) obvious insulting treatment directed toward her.

Contrary to Beauchamp's testimony that he never knew there was a problem, he learned after the fact that the Chief Counsel was angry because she was refused charts, Beauchamp planned to embarrass Richards when she arrived at the off-site, knowing that there would be no briefing charts for her).

Beauchamp made FALSE statements, when he testified, P. 99, Lines 3-12. "I learned about this after the fact__ maybe later in the day, or the next day (that Richards had alleged that she was not given "slides" at the Meadow Brook off-site.), and I said, what happened. The information provided me was we made a mistake, we didn't make enough books, P. 99, L. 25 to L. 4, P. 100. I genuinely believed at that time that a mistake had been made---.It was an all day meeting. P. 101, L. 21. It would go until late afternoon (the BOD meeting). Suspect that they made a mistake, that they did not make enough books. Had told him (Newberry) to make sure all attendees have all the materials. T, P. 100, L. 4-6. `, P. 100-101, Lines 23-25, to L. 1, P. 101." No Sir. I was not. (Before the meeting, were you aware that enough presentation of slide books had not been made?) T, P. 102, L. 3-12. At any

time during that meeting, did anyone---make you aware of the fact she did not have slides? P. 102, L. 9-12. I don't recall specifically. Either she, or the Deputy, or the Chief of Staff, may have said we didn't make enough charts for the meeting, but I don't recall specifically. T, P. 102, Line17-21, L. 19. If they had said, we didn't make Verlyn a copy intentionally, and then I would have taken direct action immediately. T, P. 102, Lines 25 to P. 103, L. 9. P. 103-109, "Never had any consideration to take Richards off BOD; always wanted her to be a Board member, Investigator states, Richards testified that two people (Goldsmith and Bradley) were more or less guarding the slides, and one of them made the statement that, "We're not to give you one". ?? Lines 7-10. I didn't know about that until after the fact, and that was inconsistent with the information that I had received, that we didn't make enough copies. T, P. 103, L. 25, to P. 104, L. 1. At any time, did you give any directive not to include Richards in those meetings? P. 104, lines, 2-4. No, sir, I did not and that statement is categorically FALSE. I wanted her at the meetings. P. 104, L. 9. Do you recall a discussion with Newberry during the break, when he told you that I was angry because I didn't have charts? I con't recall conversation, and. I don't know why I would. I can't say he did not. It was two years ago. P. 104, L. 17. ...I wanted you there, Verlyn. P. 104, lines 18-20, And, I also don't have to ask all my other SESs (meaning those who work for Chapin)? I never said such a statement. I wanted you there. I made it clear from the outset, from the initial meetings you attended, and subsequent meetings. Had told him (Newberry) to make sure all attendees have all the materials. P. 107, L. 16, P. 108, L. 15, Richards has always been a BOD

member. Beauchamp testified, I told Verlyn they made a mistake. Said I would not let it happen again. Could not believe it. Did apologize. P. 98, lines 7- 8, intended from the very outset that the counsel would be an intimate part of those meetings...at every session. P. 98, lines 12-13, I made a specific point on many, many occasions to ask Verlyn, "Verlyn, what's your view on that? (FALSE). Beauchamp made FALSE statements when he testified, P. 99, lines 3-12. I learned about this after the fact__ maybe later in the day, or the next day, and I said, what happened. The information provided me was we made a mistake, we didn't make enough books. P. 99, L. 25 to L. 4, P. 100. I genuinely believed at that time that a mistake had been made---.t, P. 99, L. 17-21.

Contrary to Beauchamp's testimony, he did not call the Chief Counsel in to his office to discuss the "events" at the off-site. He did not call her in the day following the off-site and he did not call her in to discuss it the following Monday. There was a meeting already scheduled for Monday. Legal Office Resources was the topic discussed until Richards requested permission to discuss the off-site. (Bacon's sworn statement, Pl Ex? V-VIII, P.?? Beauchamp, made FALSE statements when he testified to what was said at the meeting, the following Monday (February 23, 1998), when Richards told him how inappropriate her treatment was at the BOD and gave him the reasons why she thought she should be present at BOD meetings, he actually said maybe she could come to a few, if he needed her, and he would take her request to be reinstated as a BOD member under advisement. Bacon and Newberry were present. Beauchamp testified, "I called Verlyn in a few days later when

we were able to get together, and I said, Verlyn they made a mistake. They did not make enough copies. I apologized for that.__ and I've given the direction not to let it happen again. P. 105, L. 12. I apologized to you at that meeting for you not having the materials you thought you needed. P. 105, L. 8. You don't recall any discussion with me as I proved to you that I had been invited to the meeting? Verlyn, I recall the discussion, but you didn't need to prove to me that you were invited. P. 105, L. 3. No, don't recall that the Chief Counsel brought a package of papers with her (to prove that she had been invited).

When asked why he told Richards that" maybe he would let her attend some BOD meetings if he decided it was necessary he testified, never said "Maybe she could attend." P. 98, lines 7- 8. Intended from the very outset that the counsel would be an intimate part of those meetings...at every session." P. 98, lines 12-13, I made a specific point on many, many occasions to ask Verlyn, Verlyn, what's your view on that? P. 100, lines 8-14: Her comments that I didn't want her at these meetings, that's absolutely FALSE. I wanted her at these meetings...P. 100; I needed her to bond with the senior leaders. Compare, Bacon testified, I remember us going to talk to Beauchamp (Monday, February 23, 1998). T, P. 76, L. 19), that it was her recollection is that I said to Beauchamp something to the effect, well, I know, I had been invited to this Board of Director's meeting, and her recollection is that I said to him "something to the effect, well, you know, I had been invited to this Board of Director's meeting; he said something to the effect, well, maybe you would go to most or some Board of Director's meetings, or maybe there

would be some that you wouldn't go to, or something along those lines... (P., 77, L. 3.
Bacon testified, Yes" when she was asked if she recalled Richards giving a list of arguments for why she should be included in BOD meetings; She recalled Richards stated that being invited just when the CG decided she was needed was not good enough.. That Richards 'job was to identify potential legal issues and she could not do that if she was not present. .. That Richards argued that all big corporations always include their Chief Counsel at BOD meetings.

(Asked if she recalled Beauchamp ending the conversation when General Beauchamp said that he would take it under advisement, whether the Chief Counsel could attend them at all), That's probably true. See RDecl, BODs following Meadow Brook, Adel, ¶ 469; T, 66-89, V,XII, Pg(s) 41-64, T, P. 76, L. 19).

Newberry was aware before the off-site that Beauchamp had removed Richards from her position as a BOD member. He had participated in discussions with Beauchamp addressing the "list." Newberry admits he was aware that Goldsmith refused Richards charts despite Richards being the second Director to arrive.
Newberry falsely testifies, I was not privy to any discussions with anybody that said let's with malice and forethought, not gives her a book. I didn't know about all that. The first I knew was when I heard what I heard there, which was ridiculous. If you're going to invite a senior person to the meeting, for God sake, you make them some charts, give them a book. That's common sense with me but that's not what got done. T, P. 56, Ln

24-25, 57, Ln 1. And it turns out, I think, that it was an oversight. I didn't do it. I can't tell you if it was deliberate, or otherwise, but that's what happened. Richards was "always on the BOD; all the way back to whenever." T, P. 96, L. 15, Do you recall Richards coming, and sitting down telling you she needed to talk with you about the charts? Yeah, I believe this debate had already begun why the Chief Counsel is not being given charts. P. 96, L. 17, I'm sure she did tell me that (that the Chief Counsel was angry because she had not been given charts).; P. 57, L. 14, you said that you did not give a directive to Colonel Pankey not to make any briefing charts for Richards? P. 57, L. 18, I had no discussion with Colonel Pankey. Prior to this BOD, I didn't know a thing about is Verlyn going to get charts, or not. Nobody asked me that question. (Were you aware that Richards was not getting a copy of the slides? How did you become aware of it?). T, P. 56, Lines 13. When I walked in the room. Either Verlyn or I was the first to arrive. And I can't recall now whether I was there before Richards or her before me. T, P. 56, Lines 15. But I know it wasn't long until she was engaged in a conversation with Goldsmith about why she didn't have a book. T, P. 56, Lines 17-19.

Newberry did nothing to assist his SES "female" counterpart to obtain her charts even though he personally observed Goldsmith and Richards discussing why Goldsmith was refusing to give Richards charts. Newberry failed to correct Goldsmith's refusal to give Richards charts before the rest of the BOD members arrived, when many packages of briefing charts were available on the table, none of the available charts were identified

to particular BOD members, and he and Richards were the only BOD members in the room. Directors of a Board of Directors (BOD) are not "invited to a BOD meeting. They are expected to be there. Although Newberry acknowledges that he spoke to Beauchamp "out there at the site," about the charts, he made FALSE statements to what he said to Beauchamp during the morning break and what Beauchamp said in response. Contrary to his testimony, Newberry informed Richards that Beauchamp said he was mad because he had not invited the Chief Counsel to the Board meeting, and "Why do I have to invite the Chief Counsel when I don't have to invite all my SESers? (***The SESs not invited work under Chapin in TARDEC and under Arbuckle at ARDEC, and not BCHs.

Newberry falsely testified, ("Did you take any corrective action after that to make sure that similar occurrence did not happen again?) P. 57, lines 5-13, I did tell Beauchamp that I thought what happened, I told him out there on site, was ridiculous, and if we were going to invite the Chief Counsel to the BODs, we ought to have enough sense to make her a set of charts. Said to Beauchamp, "For God sakes, why didn't they make her charts" P. 57, Lines 9-10. And I think Beauchamp agreed with that and concluded that this was an administrative mistake. Beauchamp said she was a BOD member. P. 57, Lines 11-13. It was not his intent to exclude her, one from attendance, or two from having a set of charts. Think it was an oversight.

(Do you recall that you went to the CG and came back and told her that he said I'm angry because I didn't invite her to the meeting? Why do I have to include her? P. 96, L. 17, No, I don't recall him

saying, I didn't invite her to the meeting. P. 96, L. 18-23, What I recall being said is she is at the meeting and it's ludicrous---And it's the same thing I told him going in, that we would invite a senior person and not give them charts. Someone was stupid enough to then say, I didn't make her charts. It makes no sense. P. 97, L. 3, Do you believe that you told Richards that--- (.that .someone was stupid enough to say, I didn't make her charts, and that it makes no sense?) ...No. (P. 97, L. 12, Do you know who that stupid person was?) No I don't. P. 97, L. 14, and you didn't check to see who directed that she not be given charts? , P. 97, L. 16, no. When I checked with my boss (Beauchamp), and it was quick (during the break), he and I both agreed this was a silly situation, that if she's there, she ought to have charts. Beauchamp said she was a BOD member. P. 57, Lines 11-13. It was not his intent to exclude her, one from attendance, or two from having a set of charts. Think it was an oversight.

Newberry Falsely suggests it was a mistake that she did not receive a book (briefing charts). Although it may be true that he "didn't do it," by him, it is more likely than not, when Beauchamp discussed his decision to remove Richards from the BOD with Newberry and Pankey, Newberry supported the decision. After Newberry spoke to Beauchamp out at the site about the charts, Beauchamp did nothing to correct. Neither official admonished the Chief of Staff, Colonel Pankey, who planned the meetings, Goldsmith who refused Richards charts, or Bradley, who was responsible for making the charts). Newberry was as aware as Colonel Pankey of the reasons Beauchamp gave

for removing Richards from the BOD, and making the membership "small" by removing one BOD member, Richards. Because he knew exactly why Goldsmith refused Richards charts, and did not have any reason to question Colonel Pankey about the charts.

Pankey testified falsely. He directed Goldsmith and Goldsmith's subordinate, Richard Bradley not to make charts for Richards. Pankey informed Goldsmith of the reasons Beauchamp had given him as to why Beauchamp had removed Richards as a BOD member, and did not want her as an attendee. Colonel Pankey, informed Bradley, who was responsible for making the charts, that the reason for not making the Chief Counsel charts was because she was not considered invited by the CG. . Pankey testified,

"Meetings were very sensitive, and therefore, Beauchamp decided to make them small. Did you ever see a list of the original Board of Directors?) L. 9, P. 22, probably, since I planned the meetings. (When that meeting was organized at Meadow Brook, where there were not sufficient charts for Richards and you said there was an intent to have a very small board of Directors...are you aware there were E-mails that went out to the people who were going to attend?) Would think.(Do you believe there was a blanket E-mail would go just to people who were to attend if it told them they had to ride a bus to the meeting?). Would assume that's how the meeting was announced...probably not just to the people who were going to attend...probably a blanket E-mail (Did Beauchamp tell you that Richards was not going to be at the meeting?) Which meeting? The Meadow Brook meeting? I tell you Ma'am there

are so many meetings we have I don't even know where Meadow Brook is. I just got on the bus for transportation and went. I have no idea... (It was the first off-site BOD meeting. Who would forget Meadow Brook Hall the Dodge mansion?) At one point in time we only prepared the number for the people who would be attending, and you have no recollection telling Bradley and Goldsmith that they were not to make charts for the Chief Counsel at the BOD meeting?) Early on when we were just starting up the organization, downsizing to meet our targets, P. 28, L. 8, we purposely kept it small. When we transitioned to a larger group, I couldn't tell you. (Let me ask you, do you recall at any time telling Goldsmith and Richard Bradley specifically that they were not to make charts for Verlyn Richards?). Can speculate that they may have thought Richards would not attend the meeting. .Maybe charts weren't made for Richards because they thought she wouldn't be attending. The environment at the BOD meetings included very sensitive information. Beauchamp was reorganizing the Command to meet our reduction in force and increased mission load. P. 20, L. 3-7, So every thing we're talking about is highly sensitive, so Beauchamp wanted a consensus with the leaders, and so he wanted to keep it (the BOD)as small as absolutely possible, and as few people as we could so we started off with just the Directors. , (Radford, asks, in that context would Richards be considered a Director?). P. 20, L. 15, No. Based on your recollection do you remember who was considered members of the BOD? P. 20, L. 16, I can't even remember their job titles but it would be the Director of IMMC. Chief of Tactical vehicles... Beauchamp started with the Directors, Director of

the IMMC, Tom Boyle (Acting); Larry Schieble hadn't arrived yet, Yakovac the Deputy for Systems Acquisition (DSA), Mehney, Director of the Acquisition Center, Chapin, Director of TARDEC, Arbuckle, Commander of ARDEC (Picatinny), Director of ACALA (TACOM-Rock Island) and Newberry, naturally as the Deputy. Maybe there was a time when Richards' name was added (You have said these were the original members. Do you remember at what point Beauchamp would have added Richards to the BOD?). . No, that's beyond my recollection. (When you purposely kept it small, did you purposely exclude Richards? I only intended to include the Directors as I have named them. So you purposely did not intend to include Richards, is that correct? I may have, I may not have. But you don't recall ever specifically mentioning Verlyn Richards' name to Goldsmith and Bradley and telling them to not make her materials? You may have, you may not have? May have, I may not have. P. 29, I'd have to really sit down and think about it. (Colonel Pankey, if you were aware that Beauchamp has already testified that Richards has always been a BOD member and she was always invited to meetings, would that change you're recollection about whether she was excluded from any meeting?) But again if it is, it was because I misunderstood his direction or guidance to me, but originally we purposely kept it very small. Now whether that was in accordance with just my sense of what his guidance was to me and didn't get it correct. He had directed me to keep it very small to focus on those issues I have already mentioned. If the CG said I was to include all SESs then originally I did not do that.[*This jibes with Richards' statement that after the break

Newberry told her that one of the things Beauchamp had said was," I don't have to invite all my SESs so I don't have to invite her. See below). Investigator states, you gave the directive to Goldsmith to only make X number of slides---the allegation was that you gave specific instructions not to make a copy of the briefing slides for her, P. 19, L. 13. Pankey responds, "It was so long ago, I don't have any specific recollection of excluding, or why I might have excluded... No recollection of excluding Richards. Don't recall directing Goldsmith not to make her a copy of the briefing slides. It's too long ago and I can't recall any specific instructions to Goldsmith other than to make X number of copies. I can speculate on many reasons (why ... Goldsmith refused Richards charts).But I can tell you that the BOD meetings were very sensitive meetings. Richards was not always present at the BOD meetings and we may have not made one because we didn't think she was going to be there. Can speculate that they may have thought she would not attend the meeting. She did not always attend the BOD. At first we only included Directors When we transitioned to a larger group, I couldn't tell you. Compare Dogwill affidavit. Id.

Goldsmith and Bradley specifically did not make charts for Richards, and therefore, did not have enough charts at the off-site. Aaron Goldsmith, Chief, TACOM Business Planning office 1996 to July 1999 made FALSE statements. Contrary to Goldsmith's statements that he did not recall Pankey directing him not to make charts for Richards, he admits that he refused her charts and gives irrational reasons for his action. Goldsmith knew that there is no such thing as primary and

secondary members of the BOD, and no such thing as Beauchamp BOD members voting. Either one is a BOD member, or one is not a BOD member. The CG made all the decisions. The BOD members were advisors. Compare, NEWBERRY testifies (She) was an original BOD member from day one. Identifying who voted makes no sense. BOD members are advisors. The Commander decides whether he is going with the consensus or not. "Possibly Goldsmith found it easy to make the assumption that a female Chief Counsel, equivalent to a military could not possibly be equivalent to males. He was heavily involved in the discussions before the BOD meeting addressing who was on Beauchamp's list, and in further discussions the following Monday. One questions how the person responsible for administrative duties does not remember that there were a number of BOD meetings before the off-site. Goldsmith testified,

"Colonel Pankey told me that Beauchamp wanted to keep the meeting small and provided a list of BOD members he expected to attend. At first I wasn't included but Newberry decided that I had responsibilities so Doug (Newberry) put me back on the list. Colonel Pankey told me to sit and listen and do what needs to be done. Can't recall if Richards' name was on the list of BOD members, Meeting was intended to be small. T, P.s 96-108). ...Refused her charts because she was a secondary member of the BOD, not a primary member and only the voting members were the primary members, and she was not a voting member; she was staff like me. The February 19th BOD was the first "Beauchamp" BOD meeting?" Four years later

Newberry changed "some" of his FALSE testimony Newberry tells the truth (partial) in deposition March 2004. But for Beauchamp's action, removing Richards from the TACOM Board of Directors without informing her, Richards would have received charts at the TACOM Board of Directors' Meadow Brook Hall. Newberry 'spills the beans' and admits that Beauchamp did tell him he was angry because he did not invite Richards. ¶448 to ¶468. See Beauchamp T, 162-119, V-XII, Pg(s)93-104, T, 98, Ln(s) 7- 8, 12-13; 100, Ln(s) 8-9 to14; ¶s 373 -379, RDecl. He also links Beauchamp's adverse 'acts' to Richards protected activity. Compare Newberry's testimony four years later. Did you see any evidence from the CGs that would support the conclusion that as a result of her complaints about these various items we discussed, like not being on the rating chain, being seated in the back at the VTC conferences, the TDA issues we talked about earlier, did you see any change in the way the CGs related to Richards after those complaints were made? "You know, I think I would say no, but the unfortunate situation occurred in one of our off-site board meetings, and in somebody's deposition it referred to that as a Meadow Brook meeting. The claim was that she showed up at a meeting that Beauchamp didn't want her at. And the real, you know, straw that broke the camel's back so to speak was she was told that you isn't suppose to be here and we don't have any handouts for you and sit down, hush up, we isn't going to give you nothing. Well, if you had known me personally, you would have known that at those senior level meetings I typically was there along with the administrative personnel setting up or very shortly thereafter. But I usually preceded anybody else's

arrival, and that's the way it was on this day. But Verlyn happened to be the next one that showed up. And I kind of watched this with dismay. I don't believe we have the Chief Counsel here and we're going to be stupid enough to tell her you don't get any charts. I mean, that don't make no sense. Now you could argue over the issue of whether she's suppose to be there or not. That wasn't my thing. (That was a board of directors meeting?) Yes sir. (Was she a member of the board of directors?) Well that's also up for debate, because that went hot and cold. In my view she always should have been. She was a senior person. She is the Chief Counsel. We need to make sure that the things we're doing are appropriate in the light of the legal structure. So in my view no harm, no foul. And in this particular instance when I took that issue on with Beauchamp and...you know, again, we'd known each other a long time, but he said to me with some anger, and it was being expressed at me personally, because what had happened is when Verlyn spoke to me about the charts and I spoke to Aaron about all this, you know, I think I told the chief (Richards) I will bring that to Beauchamp's attention And I did do that at an appropriate point. He went out to take a potty break or something and I followed him. And I said, hey you know, your Chief Counsel's here at the meeting and we've done something really stupid, we've told her she couldn't have any charts. I said that defies logic. AND HE SAID I DIDN'T INVITE HER, SHE'S NOT SUPPOSE TO BE HERE. I said, "Let me tell you that are irrelevant." Unless you're going to send her away she's here, we ought to give her charts that were my position to him, but his position was she ain't supposed to be here. Well, I wasn't involved in that decision.

Nobody asked me. I would have violently opposed that had I been given that. Now, the general could have done what he wanted to do, but I would have said the same thing to him I'm saying to you. That is a dumb idea. (Now, this Meadow Brook meeting or whatever occurred after Richards had complained about her belief that she was being discriminated against?) I don't know that. I can't recall chicken or egg. I don't know which came first anymore. (Was there some reason that you knew of that the general didn't want. Richards, the Chief Counsel, at a Board of Directors meeting?) The only thing I know...and again, I would have said it preceded this particular situation that somehow that issue came up to Beauchamp. And his comment to his Chief of Staff, and I guess I was there, or the chief came and told me, but somehow I was made aware of it, is that Beauchamp had said I will determine when I need the Chief Counsel. I personally. She works for me. I will determine. I didn't go in and argue that at that point, and I'm not certain how I learned all that. To my knowledge in this meeting that we've just spoken to was the first time this thing erupted for somewhat more public debate. And prior to that. Richards had attended the board of directors meetings and there were no problems about her attendance or whether ..... (Interposing)
There was never a problem with me. I don't recall any other problems either. And do you know whether Meadow Brook took place a week or so after. Richards' mid-year review in December?) No, sir, I wouldn't know that. Again, I was not part of our rating scheme unless somebody told me that. They may at one point, but I don't recall that. (Do you recall the general coming to you before that

meeting, that Meadow Brook meeting, and saying I had a mid-year review with Richards and she complained that I was treating her disparately because of her gender or words to that effect?) No, sir. Do you remember any such meeting like that?) Well, I remember the commander saying to me that Verlyn had complained about one thing or another and this notion of disparate treatment. I remember those events occurring, but where they fit in the big picture in the timing I don't recall all that. So did you advise the CG that it was not a smart idea to exclude the Chief Counsel from BOD meeting? Well, after this blow-up and the any charts and she ain't suppose to be here because I didn't invite her. Yeah. I said that's a dumb idea, she is our Chief Counsel; we need her input to this process. And, you know, you'd have to know Beauchamp to appreciate this. You offered your opinion, you shut your mouth, and you did what you were supposed to do, you know. That's what I did. No one informed Richards that Beauchamp had removed her from the BOD.

MORE HARASSMENT, FOLLOW ON BOD MEETINGS

Harassment at March 26, 1999 Board Of Directors Meeting. When Richards saw her name on the email notice of the March BOD, she had her admin officer check with the CG's office to see if she was really supposed to attend. Beauchamp attempted to embarrass Richards. A logistics issue was being briefed and even Colonel Morgan, who was present as Acting Director of the IMMC until Larry Schieble was selected whispered to Richards that it was difficult to understand. After the briefing Beauchamp stated Richards looked confused and would she please explain what had just been

briefed. Richards responded by saying she was not confused and the crux of the briefing was the plan to integrate the wholesale with the retail. She said further, you know the SAMS, the SAILS---also asked him if he was surprised that she understood it. She felt at the time that he was trying to embarrass her. Beauchamp responded, what do you mean? She said lawyers play in all aspects of the Army's business and a few years earlier she had worked on a major claim related to the Objective Supply System.

On the agenda for April 23, 1998, Richards found her name listed on the agenda as a speaker. The topic was sexual harassment. No one had asked if she would or could be ready to do it. If she had not have seen it, she would not have been ready. Charts had to be prepared; a speech had to be written. Earlier topics ate up the time the day of the BOD meeting so she did not get to speak the topic was never added to future agendas. When she asked about it, she was told there were too many priorities.

REMOVAL TACOM LEGAL OFFICE "BOX" WITH RICHARDS' TITLE FROM TACOM ORGANIZATION CHART AND SUBSTITUTION OF A BOX LABELED "STAFF;

Beauchamp –April / May removed the TACOM Legal Office "box" with Richards' title from TACOM organization chart and substitution of a box labeled "Staff; Compare prior chart and Caldwell fix. " Removal from TACOM Org Chart, Animus, V-VIII, P. 71-.

A gentleman who works in the Business Planning office gave Richards a heads up April-May 1998 that Beauchamp was going to leave her name off the new organization chart. There's going to be a box labeled "Staff." Since the Chief Counsel is an umbrella position, her title should be listed on the organization chart along with the Deputy, the Chief of Staff, and the CG. V-V(C), P. 3. Reprisal Removal of Chief Counsel Title from TACOM Organizational Chart (April-May 1998.)

OTHER EXAMPLES, EXCLUSION FROM MEETING \]

Discussion directly affecting Richards' office, manpower, rights to supervise and rate off-site attorneys.

Decision not to place off-site attorneys on her TDA.

Andrews' decision to inform ARDEC Commander, Boddie, he was not going to place Richards in rating chain after directing her to inform Boddie, and ARDEC attorneys the opposite.

Beauchamp, Decision / Richards Intermediate rate, V-VIII, P . . . 70; despite directing Richards to work it out with Arbuckle that she would be either the initial or senior rater.

Scout Program (Korte), V-VIII, P. 77;
TDA, P... 78;

Relief from Hiring Freeze

Industrial Committee Tank. Automotive Producers (ICETAPS) membership. TACOM executives and CEOs of TACOM's major Defense Contractors discuss common issues relevant to meeting TACOM's mission. TACOM membership included the CG, Director of TARDEC, Commanders of ARDEC and Depots, Director of Contracting, PEO, Deputy PEO, Directors, IMMC, Acquisition Center, TARDEC, Group started by Andrews and currently active. Richards had no knowledge of the group until November 1999. Beauchamp testified Richards' presence would be "chilling."

Planning TACOM's future organization e.g., strategy meetings addressing Contracting Officer's placement and rating chains.

Planned relocation of office at Warren.

Offsite conferences, meetings she was required to identify potential legal issues.
Contractors visits to CG. Needed ensure inappropriate topics were not brought up such a specific source selections that could be interpreted as favoritism. A practice insisted upon at Headquarters in existence when AL Dawes was Chief Counsel; despite Richards requesting that she be present...included Mehney. For a non-lawyer to be advising on legal issues such as whether or not certain topics could be interpreted as favoritism would amount to practicing law without a license. Richards' duties included keeping the TACOM Commanding out of trouble

Manpower discussions, which included Heads of other Business Centers
Decision to withdraw rating authority
Decision by Caldwell to remove Richards as intermediate rater of all offsite Chiefs.
Depot Commander, Colonel Potts, Newberry, and Beauchamp August 9, 1999 decision to withdraw authority to intermediate rate Les Mason, Chief, TACOM-Anniston Legal division. Mason became aware through Anniston channels... total surprise. Mason retrieved messages that went between Anniston and Newberry that establish Newberry as authorizing the Anniston Commander to withdraw the Chief Counsel as intermediate rater. P. 10 in "Facts in Support." V-II. (Discussed below. Not receiving discretionary performance twice bonuses every year (even in years in which Richards also received substantial step increases in salary);

Other than isolated comments regarding female body parts, every instance of alleged discrimination

AUSA'S FIFTH CLAIM, LEGAL OFFICE STAFFING: PG 17, LN 25. WHEN RICHARDS ASSUMED HER POSITION, SHE HAD A STAFF OF 30 ATTORNEYS AT TACOM. REDUCTION–IN-FORCE (RIF) DROPPED TWO ATTORNEYS. .SHE WAS ALLOWED TO HIRE AS PEOPLE LEFT WHEN THERE WAS NOT A HIRING FREEZE; PG 18, WHEN THERE WAS A HIRING FREEZE, SHE WAS ALLOWED TO ADVERTISE TO SEE IF PEOPLE

WANTED TO SWITCH OVER; NOT SUCCESSFUL; PG 18, LN 23:_THERE IS NO SUGGESTION SHE WAS AT ANYPOINTDOWNGRADED OR PUNISHED BECAUSE OF STRETCHED RESOURCES, OR HAS NOT ALLEGED SHE WAS NOT ABLE TO GET THE JOB DONE; PG 18, LN 25: _SHE HAS NEVER BEEN PENALIZED IN ANY FASHION. HER UNIT SUFFERED FEWER CUTBACKS THAN ANYONE ELSE. NO SUGGESTION OF DISCRIMINATIONOR RETALIATION.HOWCAN THAT BEAHOSTILE ENVIRONMENT?

AUSA once again risks FALSE representations to the district court. He had a history of being before this DC many times and did let slip to Richards and her attorney that the judge was "lazy." He was correct in expecting Richards' evidence would not be carefully examined.

Contrary to the DC statement, Richards alleged a number of acts. As 'the last 'act.' that meet the exhaustion requirement. She did not allege Beauchamp's question, May, 6 1999, during their one and one half hour discussion, the day she left on long term sick leave, as to whether he had anything to do with her ill health, as hostile.

May 6, 1999, the day Richards left for long term sick leave, Beauchamp listened to Richards' protected protests for a good hour and one- half. Id. Page 51.

The district court (DC) demonstrated its failure to examine Richards' affidavit when it stated

that and that "some court "called Richards and no date was given for the telephone call, "was "not enough (to meet the exhaustion requirement),

Korte's name appears 118 times in Richards SJH Declaration. Korte is not a "court." He is a SES ES-VI, the same level as the Secretary of the Army.
Richards did give the date of the 'act.' Compare, RDecl, ¶ 524, "ON or about May 15, 1999, the week before the CLE conference, May 23, 1999, when she received another call from. Korte informing her he discussed the spaces with Newberry. Newberry said that the command had other priorities and he would only take them if he could use them as he saw fit. Korte said, "What if I fence them for the legal office?" Newberry said, "That wouldn't be fair to everyone else. This 'act" relates back to the many adverse manpower acts, previously taken.

AUSA falsely represents Richards was requesting greater manpower than_Dawes had for the same work. Pg 17, Ln 25,_when Richards assumed her position and Richards' unit suffered fewer cutbacks than anyone else and was requesting greater manpower than Dawes while Richards was requesting fair treatment compared with her similarly situated male BCHs tasked with the same task, integrating off-site employees into her office. Dawes left before ARDEC was integrated into TACOM. Anniston, Red River,

Sierra, Waterveliet, and Rock Island Arsenal. In addition, the ATCOM MSC was closed and TACOM received their watercraft programs, including large ships, which repositioned vehicles. Contrary to other BCHs, who were responsible for "pieces of the business processes, Richards was responsible to 'play' in all other BCHs' processes?
The CGs retaliated for Richards' protected protests without authority, materially altering Richards' express terms of employment as compared to male leaders tasked with the same task to integrate newly acquired off-site employees, who performed the same function into their organizations to assist them with the newly acquired mission, who transferred to TACOM by, denying her manpower needs to perform the integration task. From 1996 on. RDecl, V-VIII page 64-65. Richards Business Center consisted of high graded PHD level attorneys. Other Business Centers consisted of GS 1-GS 15s. The responsibility reached into every other organization to any point in Business processes anywhere in TACOM. Other Business Center Heads could reclassify lower graded positions to higher grade as needed. A CS-14 is a high grade. It did not require another space to upgrade Meyer to a GS-15 civilian deputy position.

Chapin Tes, the lawyers were in the least position because they were supported out of the OMA (operation and maintenance budget).... Legal was going to lose a space....What's one space T, Page 47, Ln 17;

V- V-XII (7), page(s) 159-192, at page; Administrative Complaint, Facts in Support, page(s) 12-14, V- B, page 51, Ln(s) 3-25, page 52, Ln(s) 6-25); page 53, Ln(s)1-6,54, Ln(s) 8-12).

In an environment where spaces were gold and when they come with money, Newberry turned them down because they were to go to Richards.

Relief from the hiring freeze issue was one act out of many in the category of manpower. where CGs and other proxies committed multiple adverse "acts"
Money wasn't an issue. The DSA and PEOs always did what they could to assist the Legal office. Richards had no problems with the PEO two star generals or the DSAs.
Richards' hiring freeze relief requests were delayed from, January 1997 through June 1998, when "Acting" Chief of Staff, Iona Abram (black female), after Pankey departed she authorized Richards to go outside TACOM to hire attorneys. Newberry first unequivocally denied Richards relief from the hiring freeze by denying requests based on technicalities such as failing to give a funding cite (DSA had committed to fund the legal office)

Newberry played a deceitful game with Richards to delay her even further. He decided to restrict Richards to hiring lawyers, licensed, but working in non-lawyer fields at TACOM, when Newberry knew, that during a

reduction in force (RIF) no employee in their right mind would give up RIF rights to transfer to an accepted service position; Those who accepted would lose RIF rights, and be the first out the door. Compare, Richards' hiring freeze relief requests and exclusion from discussions /meetings with Newberry's direct correspondence with the male ARDEC Commander, Boddie, whom he granted immediate authority to hire lawyers from outside TACOM with no restrictions. Id page 20. 6-29-98 Relief from Hiring Freeze..... V-V (C) page1 1. January 1997V© page 11- 20. , Moore-White black female, special staff officer Acting Chief, TACOM Business Office .under the Chief of Staff, Special Staff Business Center, who does the paper work, gave Richards the emails), Richards states, I did not get a better understanding of some of the things going on behind my back until much later in time. It was after Andrews departed and Colonel Pankey was the Chief of staff. I received a visit from Hazel Moore-White, chief of a division of the business office under the Chief Of Staff. She came to see Richards during the period Laney Pankey was Chief of Staff and after Andrews left to command TECOM. She brought Denise Bates, Acting EEO Officer with her. She told Richards she was very upset about the way Richards was treated. One day after she saw Pankey walk away from Richards in the hall when I was trying to talk to him she went home and told her husband that if they had a bottle of wine she would drink the whole thing because she was so upset. She told

Richards she had gone to the EEO officer himself, Gonzales Williams and asked him to do something. He told her Richards could pull rank on Pankey. (That's not how it works with the "green suitors."). She told Richards that one-day she sat in for someone during Andrews' morning "huddle." She said, "Poor little black Hazel. I was invisible. They forgot I was there. They were talking about women's body parts, and they talked about you. Richards". She told Richards Rick Bradley was present, and told the CG that if this conversation kept up, he would have to leave. She asked Richards how she was possibly dealing with the treatment she was getting. Richards told her she was attempting to be as diplomatic as she could and trying to do her job. She also gave Richards some insight into the different treatment she was being given when it came to asking for extra spaces, trying to keep the spaces the legal office had, or issues related to keeping high grades. She told Richards she dealt with all the paperwork related to these types of actions. She said when they have tried to reduce spaces in the Acquisition Center, for example, and Mehney calls and says he can't live with it; the Chief of Staff comes and tells her to change the paperwork because Mehney could not live with it. When Richards ask for something critical for the legal office that supports the whole command, they never give it to Richards. What she told Richards is the tip of the iceberg.

Moore-White left TACOM and accepted a job in Atlanta as XO to CG to escape TACOM's hostile environment and was coaxed out of the bathroom to testify (on the record). (Do you recall telling Richards that in the process of doing your work, that Colonel Pankey would come and say things like, Hazel, Dan Mehney can't live with that? So we've got to change it?) "Yes." When Richards asks for something critical for the legal office that supports the whole command, they never give it to Richards. What she told Richards is just the tip of the iceberg Richards' hiring freeze relief requests, January 1997 through June 1998, when "Acting" Chief of Staff, Iona Abram (black female), after Pankey departed TACOM, authorized Richards to go outside TACOM to hire attorneys. V- Pg 20, denying requests based on technicalities such as failing to give a funding cite (DSA had committed to fund the legal office. Compare, Moore-White Tes, Male SESers get what they ask for Page 109-Lines 16-Page 110, Line 22, (As part of your job, you ...implemented .directions that possibly came from Colonel Pankey, as far as spaces, taking away spaces, adding.... I mean they made the decisions but you did the paper work?). Yes. Line 23... (Do you recall telling Richards that in the process of doing your work, that Colonel Pankey would come and say things like, Hazel, Dan Mehney can't live with that? So we've got to change it?) Yes. (Do you remember getting messages back and forth about relief from the hiring freeze, which I was not privy,

between Pankey, Gianfermi, Newberry, and you?) Remembers it took seven months (one and one-half years) to get relief Yes. (Do you remember getting messages back and forth about relief from the hiring freeze, which I was not privy, between Pankey, Gianfermi's, Newberry and you?) Remember it took seven months to get relief Moore-White Testimony, T, 99-110, V, XII, and Pg 383-394. T, 99-110, V, XII, Pg(s) 383-394; Compare, Newberry testified addressing the reason, Pg...

Compare, TACOM-Anniston Commander, Colonel Gerald Bates, who worked under CG Thompson, had no technical authority to rate a GS-14 attorney chief, in Richards' office, when he complained that he "had to have control of the lawyers at Anniston, just as Arbuckle had no technical legal qualifications, when he headed the TACOM-ARDEC organization Thompson through DCG Chapin solicited a personnel officer, Katherine Bell's "legal opinion" that Richards should be removed from her selection panel to fill the Anniston Chief position, vacated by. Leslie Mason violating Army regulations. On this point, by definition, Richards's title, "Chief Counsel" is applicable only to the Chief Counsel of a Major Subordinate Command (MSC) Legal Office. (See Introduction, Definitions at 1-6 (b), page 1-2, at Department of the Army, Headquarters US Army Materiel Command (AMC), AMC Regulation 690-300, 2, at)

NEWBERRY AUTHORIZES MEHNEY AN EXTRA HIGH GRADE SPACE FOR A SECOND DEPUTY,

WHICH HE ADMITS HE TOOK FROM ANOTHER ORGANIZATION, MORE LIKELY THAN NOT FROM THE LEGAL OFFICE.

AUSAs falsely represent Richards' unit suffered fewer cutbacks than anyone else and was requesting greater manpower than Dawes while Richards was requesting fair treatment compared with her similarly situated male BCHs tasked with the same task, integrating off-site employees into her office. Dawes left before ARDEC was integrated into TACOM. Percentage of cutbacks was more than any other center. Complainant's "My DOCs" PI Ex 83, IX-24, 6- 25-97, Legal Office was assigned the highest % loss of spaces as compared to other Business Centers–Warren (3.4% v 1.9 / 0.59 /1.29 / 1.6 /1.9. Resource Management, headed by Doug Newberry is cut salaries for three people out of 501. (0.59 %). Command staff cut two people (1.9-%) TARDEC 1.2%, Acquisition Center 1.6%, IMMC, 1.9%,

Months earlier a disparate number of high grades were taken away from the Legal Office. A business law attorney, who became a GS-14 in 1989, was the only live "body" at TACOM that was demoted (officially precluded him from advising on the complex programs that required complicated source selections and acquisition strategies; his expertise).

Newberry refused two manpower spaces, the AMC CG, Johnnie Wilson, offered Richards, if they were to be fenced for the TACOM legal office because it wouldn't be fair (Id). See RDecl, ¶ 523;

Compare, Mehney's message to his people RDecl, ¶¶49, will nearly DOUBLE the number of employees for which I am responsible and significantly increase the responsibility for management and integration of activities at the various sites.... I need to establish an additional GS-15 position. The responsibilities of the new GS-15 position will include establishing and managing a consistent TACOM procurement program for the three sites and continuing efforts for streamlining and reform of the Acquisition process. See Acquisition Center Consolidation, Pl. Ex. 29, ROI "My Doc," Supervision/Rating, § VII- 1at V-VI, May 30, 1996 Pg. V- V (B) page 6.

Newberry admits that the authorization came at the expense of another organization." Newberry Testimony, Pl. Ex. 30(a), ROI, Enc. 4, at 54, Lns. 9-21; "I'm well aware of this reorganization in the acquisition world, where we did agree with Dan Mehney, to put an additional Deputy in there, so that would be one example where, I was personally involved and supporting the process to put in an additional space, authorization, body, in that organization.

Newberry rejected AMC CG 'four stars, General Wilson's offer of two high grades in 1997 for Richards? Because Newberry wanted a high grade for the safety officer; RDecl, ¶, V-III.

Compare with Newberry's Testimony, Pl. Ex. 30 (b) pages 64, 65, 66, (explaining why he cut the legal office despite all other leaders recommending it not be cut); Mehney's November 1997 email to. Newberry states, "Workload has remained constant or increased. Further, under the support agreement (emphasis added) with ARDEC, communication is supposed to take place so we plan together11/26/ 97, Mehney learns about PBG and QDR cuts at ARDEC AC, addresses his MOU with ARDEC (as Dawes ' MOU with ACALA.; 12/2/ 97 Richards to Newberry,. same problem... Pl. Ex. 31, V-V-(B) 11-26-97, page 34;

Despite Mehney having an agreement with Andrews' subordinate commander, TACOM-ARDEC's BCH, the TACOM-ARDEC Commander, even he was having problems, despite controlling the rating chain of his contracting people, located at ARDEC. He states his hands are tied because the integration had not reached the point of placing these folks on his Table of Distribution and Allowances (TDA). Richards dealt with this same problem. (See emails related to PBG'QDR cuts); Mehney's November 1997 email to Newberry states, "Workload has remained constant or increased. Further, under the support agreement (emphasis added) with ARDEC, communication is supposed to take place so we plan together. " Mehney's email message addressing his support agreement with ARDEC (1997), at Pl. Ex. 31, page 34-35.

Compare RDecl, ¶517, September 17, 1997, meeting with Beauchamp and Newberry on legal office resources, to discuss understaffing of legal office. Beauchamp sent Richards off on "wild goose chases" directing Richards to find "unavailable" standards and prove to him that she needed resources. data to justify that the legal office was grossly understaffed, while other Business Centers were given additional support by making a simple request.

Emails given to Richards by Moore-White, establish Andrews and Beauchamp through Newberry with Pankey and Goldsmith involvement decided to restrict Richards from hiring outside TACOM; 6-29-98 Relief from Hiring Freeze..... V-V (C) page11. January 1997. 6-29-98 V-V© page 11- 20,

Richards examined the. complexity of TACOM programs, and the fact that TACOM had more of the AMC budget than other Commands, amount of work, professional to support staff ratios, supervisors to non-supervisors, designated Deputies at other MSCs where there were some offsite responsibilities by, using the accepted standard in AR 570.4, Manpower Management. ROI, "My Doc," at Manpower,

Monday following the Meadow Brook Hall BOD, February 23, 1998, Beauchamp directs Richards, to go to Korte for spaces. He tells her that her manpower space problem belonged to. Korte, not him, Bacon affidavit, "My Doc. § IV-? V-VIII, page 64.

February 23, 1998, Beauchamp did not review the comparative analysis with other AMC legal offices. He never followed up with feedback. The analysis was based on the accepted standard set out in AR 570.4, Manpower Management. This proved to Richards that Beauchamp had no intention to assist Richards, no matter what the justification. This action was a triple entendre because it was Beauchamp, who directed Richards to go to Korte for spaces saying it was Korte's responsibility and not his (balancing TACOM spaces is the TACOM CG's job). \

Beauchamp ignored his responsibility to ensure attorneys have appropriate paralegals, legal technicians, and secretaries (see AR 27-26. Instead of reviewing the justification, he threw it aside and told Richards that he was not responsible for legal spaces; Ed Korte was responsible. He directed Richards to go to Korte and ask him for spaces.

Richards told Beauchamp that Korte had no responsibility regarding any TACOM spaces, but Richards did as he directed.

Korte went one more time to the "four star" Wilson, who once again attempted to assist Richards. May 10, 1999, Korte telephoned Richards at home and told Richards he had hold of two spaces and maybe two high grades.

May 15, 1999, Newberry turned down two manpower spaces, which Korte told him he

could get for the legal office, if they were going to the legal office., and stating it was not fair to others and he would only accept them if he could use them, where he thought best. Well we knew what he thought best would not be assisting the legal office). RDecl. Compare, different treatment from males similarly situated, It also related back to Newberry's other efforts to damage Richards' reputation, hoping Richards had failed to inform Korte that she was on sick leave, attempting to influence Korte negatively toward Richards, just as he attempted to destroy her reputation with other BCHs; This act followed a long trail of acts including those related to manpower. Bacon T, 66-89, V,XII, Pg(s) 41-64, May 15, 1999 On or about May 15, 1999, when Richards received another call from . Korte informing Richards one that Newberry was really "ticked" that Richards had not informed him that Richards was taking long term sick leave, and that Newberry turned down two manpower spaces, which Korte told him he could get for the legal office, if they were going to the legal office saying it was not fair to others and he would only accept them if he could use them, where he thought best. Well we knew what he thought best would not be assisting the legal Office.

This was the action, which pushed Richards over the hill and led to my June 7, 1999 notice of intent to file EEO Complaint.

Richards told Korte that it was her view that Newberry was hoping Korte was unaware

that Richards was on sick leave. It was Newberry's intent to set up. Korte to be angry with her so Richards could be "attacked "on my return to work. This would fit with Newberry's mode of operandi.
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Richards states, I did not get a better understanding of some of the things going on behind my back until much later in time. It was after Andrews departed and Colonel Pankey was the Chief of staff. I received a visit from Hazel Moore-White, chief of a division of the business office under the Chief Of Staff. She came to see Richards during the period Laney Pankey was Chief of Staff and after Andrews left to command TECOM. She brought Denise Bates, Acting EEO Officer with her. She told Richards she was very upset about the way Richards was treated. One day after she saw Pankey walk away from Richards in the hall when I was trying to talk to him she went home and told her husband that if they had a bottle of wine she would drink the whole thing because she was so upset. She told Richards she had gone to the EEO officer himself, Gonzales Williams and asked him to do something. He told her Richards could pull rank on Pankey. (That's not how it works with the "green suitors."). She told Richards that one-day she sat in for someone during Andrews' morning "huddle."

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Testimony, T, 99-110, V, XII, and Pg 383-394. T, 99-110, V, XII, Pg(s) 383-394; Compare, Newberry testimony addressing the reason, Pg... Newberry authorizes Mehney an extra high grade space for a second deputy, which he admits he took from another organization (more likely than not from the legal office).

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wanted a high grade for the safety officer; RDecl, ¶, V-III.

Compare with Newberry's Testimony, Pl. Ex. 30 (b) pages 64, 65, 66, (explaining why he cut the legal office despite all other leaders recommending it not be cut); Mehney's November 1997 email to. Newberry states, "Workload has remained constant or increased. Further, under the support agreement (emphasis added) with ARDEC, communication is supposed to take place so we plan together. 11/26/ 97, Mehney learns about PBG and QDR cuts at ARDEC AC, addresses his MOU with ARDEC (as Dawes ' MOU with ACALA.; 12/2/ 97 Richards to Newberry,. same problem... Pl. Ex. 31, V-V-(B) 11-26-97, page 34;

Despite Mehney having an agreement with Andrews' subordinate commander, TACOM-ARDEC's BCH, the TACOM-ARDEC Commander, even he was having problems, despite controlling the rating chain of his contracting people, located at ARDEC. He states his hands are tied because the integration had not reached the point of placing these folks on his Table of Distribution and Allowances (TDA). Richards dealt with this same problem. (See emails related to PBG'QDR cuts); Mehney's November 1997 email to Newberry states, "Workload has remained constant or increased. Further, under the support agreement (emphasis added) with ARDEC, communication is supposed to take place so we plan together. " Mehney's email message addressing his

support agreement with ARDEC (1997), at Pl. Ex. 31, page 34-35.

Compare RDecl, ¶517, September 17, 1997, meeting with Beauchamp and Newberry on legal office resources, to discuss understaffing of legal office. Beauchamp sent Richards off on "wild goose chases" directing Richards to find "unavailable" standards and prove to him that she needed resources. data to justify that the legal office was grossly understaffed, while other Business Centers were given additional support by making a simple request.

Emails given to Richards by Moore-White, establish Andrews and Beauchamp through Newberry with Pankey and Goldsmith involvement decided to restrict Richards from hiring outside TACOM; 6-29-98 Relief from Hiring Freeze..... V-V (C) page11. January 1997. 6-29-98 V-V C, P. 11- 20,

Richards examined the. complexity of TACOM programs, and the fact that TACOM had more of the AMC budget than other Commands, amount of work, professional to support staff ratios, supervisors to non-supervisors, designated Deputies at other MSCs where there were some offsite responsibilities by, using the accepted standard in AR 570.4, Manpower Management. ROI, "My Doc," at Manpower,

Monday following the Meadow Brook Hall BOD, February 23, 1998, Beauchamp directs Richards, to go to Korte for spaces. He tells her that her manpower space problem

belonged to. Korte, not him, Bacon affidavit, "My Doc. § IV-? V-VIII, page 64.

February 23, 1998, Beauchamp did not review the comparative analysis with other AMC legal offices. He never followed up with feedback. The analysis was based on the accepted standard set out in AR 570.4, Manpower Management. This proved to Richards that Beauchamp had no intention to assist Richards, no matter what the justification. This action was a triple entendre because it was Beauchamp, who directed Richards to go to Korte for spaces saying it was Korte's responsibility and not his (balancing TACOM spaces is the TACOM CG's job). \

Beauchamp ignored his responsibility to ensure attorneys have appropriate paralegals, legal technicians, and secretaries (see AR 27-26. Instead of reviewing the justification, he threw it aside and told Richards that he was not responsible for legal spaces; Ed Korte was responsible. He directed Richards to go to Korte and ask him for spaces.

Richards told Beauchamp that Korte had no responsibility regarding any TACOM spaces, but Richards did as he directed.

Korte went one more time to the "four star" Wilson, who once again attempted to assist Richards. May 10, 1999, Korte telephoned Richards at home and told Richards he had hold of two spaces and maybe two high grades.

May 15, 1999, Newberry turned down two manpower spaces, which Korte told him he could get for the legal office, if they were going to the legal office., and stating it was not fair to others and he would only accept them if he could use them, where he thought best. Well we knew what he thought best would not be assisting the legal Office). Richards' SJH Declaration (RDecl). V-III, Compare different treatment from males similarly situated, Newberry testimony, T, page? With Dep, March 15, 2004. It also related back to Newberry's other efforts to damage Richards' reputation, hoping Richards had failed to inform Korte that she was on sick leave, attempting to influence Korte negatively toward Richards, just as he attempted to destroy her reputation with other BCHs;

This act followed a long trail of acts including those related to manpower. Bacon , T, 66-89, V.XII, Pg(s) 41-64, May 15, 1999 On or about May 15, 1999, when Richards received another call from . Korte informing Richards one that Newberry was really "ticked" that Richards had not informed him that Richards was taking long term sick leave, and that Newberry turned down two manpower spaces, which Korte told him he could get for the legal office, if they were going to the legal office saying it was not fair to others and he would only accept them if he could use them, where he thought best. Well we knew what he thought best would not be assisting the legal Office.

This was the action, which pushed Richards over the hill and led to my June 7, 1999 notice of intent to file EEO Complaint.
Richards told Korte that it was her view that Newberry was hoping Korte was unaware that Richards was on sick leave. It was Newberry's intent to set up. Korte to be angry with her so Richards could be "attacked "on my return to work. This would fit with Newberry's mode of operandi. Richards told Korte that it was her view that Newberry was hoping Korte was unaware she was on sick leave. It was Newberry's intent to set up Korte to be angry with Richards so I could be "attacked "on my return to work. Newberry said that would not be fair. The spaces were not sent.

Newberry was hoping Korte was unaware she was on sick leave. It was Newberry's intent to set up Korte to be angry with Richards so I could be "attacked "on my return to work. Newberry said that would not be fair. The spaces were not sent.

SEVENTH ACTION, PERFORMANCE AWARD, PG 20, LN 1, AUSAs argue that Richards moved up levels and got pay increases, and identifies 2001, and 2002 as years Richards received bonuses (after Beauchamp left), stating, so how can that be an adverse action. Pg 20, L. 19, The record shows that she had not offered any evidence to suggest why she should be entitled to anymore of an increase than she got, or why she should have bonuses,

when she didn't. She has offered no evidence that she has been treated differently from somebody else.

As the last act I could have used the Andrews / Newberry and Beauchamp / Newberry verbal continuing discriminatory policy, in practice from the time I became eligible my 1996-1997 rating period. I believed that they were discriminating against me by not appointing me to the SES Performance Award Board (PRB) because the SES regulation states that they must consider placing women and other minorities on the PRB and I was ready willing and available, the only female, and located right on site at Warren. Further, they are to attempt to place 'neutrals' on the Board and in 1996, having just arrived, I was not eligible for a monetary award. (AR 690-900 Ch.920, See ¶s 210-211 above)

Jerry Chapin (SES), Director of TARDEC, (retired April 1, 2004, from his position as Deputy to the Commanding General) when testifying at the summer 2000 Fact Finding Conference pointed out this distinctive area where I was treated differently and disadvantaged as compared to my newly appointed male SES counterparts. All newly appointed male SESs were asked to serve on a SES Performance Review Board (PRB), the first opportunity after their appointment. I believed they were discriminating against me by failing to give me a monetary award each and every year, despite my exceptional ratings, and despite the SES regulations I did not realize that Mr. Newberry had been directing those appointed, that only Business Center Heads would receive an award. This

violated SES regulations. The awards were to be based on performance. Although I believe the verbal policy violated regulation and law, which mandated that awards be based on performance, I believe that the policy became illegal discrimination, after I arrived and was eligible for an SES performance award. They decided for the purpose of awards that I was not a Business Center Head, but I was. I was not able to put the pieces together until SES, Mr. Walt Wynbelt (white male) informed me on or about May 2001...of the two times he served on the Board. (See Mr. Walter Wynbelt. Declaration at Pl Ex 76 and Dr. Richard McClellan's Declaration at Pl Ex 77)) (See award discussion, EEO Complaint chronology at P. 24, Pl Ex 58).

EIGHTH ACTION, NONPARTICIPATION ON SES PERFORMANCE REVIEW BOARDS (PRBS). Pg 20, L. 24, pg 21, L. 16, One year she was offered and appointed and immediately resigned. She did not agree with the factors determining whether someone. .board was unwilling .to change – she withdrew..... She didn't agree with requirement that the board should evaluate the difficulty of executive performance objectives and did not think the significance of the contribution should be considered. Discriminatory award policy / failure to appoint Richards to TACOM's senior level board for approving awards over $5000 to any TACOMer. Caldwell reviews history and award _____process after reading Wynbelt's affidavit

Richards combines the AUSA's seventh and eighth misrepresented actions and one of her own. They are categories of 'acts.'1996- present, and are intertwined.

1. Sixth Circuit errs by believing money was an issue. DA sends the money each year for SES awards. The amount is a percentage of total TACOM SES salaries.

2. Richards did not resign from the PRB, she said she would have to resign if it was not clarified that it was A-OK that 50% of the points would go to the most important jobs. (Even if the performer's performance was poor). See AR 27-26, Rule 113 (c), P.? he believed significant contributions performance) should be the basis, Otherwise it was illegal) her resignation was accepted. Emails establish this.

3. SES PRB was a front for pre-selection, not only for who would receive awards but who would receive the highest award. Before Richards arrived all male SESs received an award a way to avoid the percentage problem. Part of the discriminatory policy included an illegal predetermination that Business Center Heads (BCHs) were to "automatically" receive an award until Richards arrived.

4. SES Walt Wynbelt, who worked under SES Chain (TARDEC) approached Richards in the auditorium 2001, one year after the Fact –finding conference (FFC), and broached the subject of her illnesses, her case, and awards. He told her of his two experiences on the PRB, one under Andrews; the other under Beauchamp, and how different they were handled compared to other PRBs in which he participated at the pentagon. When he finished she asked if he would write an affidavit. He was happy

to, and asked what she needed. She said everything you just told me. See Wynbelt affidavit, SES, discriminatory award policy, V-VIII, P. 55. He was told by Newberry and others during the PRBs he attended that he should not have bothered evaluating the appraisals before he arrived (rules); that BCHs were to automatically receive an award. The RDECs are the only Business Centers (BCs) with SESs who are not BCHs). The unwritten rule was that those BCHs would award their SESs, who worked for them out of the organizations 'pocket.' All would receive an award. (Getting around the rules that only a percentage would receive a SES performance award. (Illegal, violates the Purpose Statute, with potential to violate the Anti-deficiency act (criminal penalties). He was also told that the SES with the most important job would receive the highest award. (Newberry believed his job was most important). All jobs are classified at the same level of importance)

5. Richards met with Caldwell and he read Wynbelt's affidavit out by the flag pole because as he told her, he was advised to avoid her before he assumed his position by Korte and team.

6. Richards as a last act could have used the Andrews / Newberry and Beauchamp / Newberry verbal continuing secret verbal discriminatory award policy from the time Richards' assumed her position 1996, and failure to appoint Richards to the SES Performance Review Board (PRB), as compared to SES male counter-parts, newly appointed SES heads of TACOM organizations such as Mehney, Boyle, Schieble, and Dr. Richard McClellan (asked, but not available; and "seasoned" SES heads of TACOM organizations Newberry, Devine Morgan, and Lehman,

7. A PRB is made up of SESs and / or General officers. Half have to be career SESs. V-IV Apx E 3. The PRB is responsible for such actions as determining appropriate financial and honorary recognition for superior executive performance, Apx, E, V—IV, P.. 54. The PRB process is intended to assure fairness. (1)PRB members must be selected based on neutrality, and (2) Consideration must be given to appointing woman and other minorities, See PRB duties Id. at AR 690-900-920, 1-3(m), §V-5(b),APP, E-3 /E (4); index, pg 5;, ROI, My Doc, Awards / Appraisals, P. 37; Pl Ex 83 (E).

8. Richards was ready willing and available, the only female SES located on site at Warren, and in 1996, having just arrived, was not eligible for an SES award. and "neutral."

9. CGs and Newberry penalized Richards for protected activity in her compensation (failing to award her SES performance awards bonuses, significant action awards, on the spot awards, and / or recommend her for presidential awards or any other monetary / non-monetary awards.

10. They retaliated within days of ProAct RDecl, ¶s352-361-363; Richards' testimony, T, 17,18, 19, 9-15, 20, 3-6, 20-21, 22-25, P. 125. **Chapin testifies;**

> "They did not put her on the assessment board (Performance Review Board (PRB). This is how a new SES learns the SES system. Another brand new SES has just been appointed (Boyle Mehney was put on the assessment board as a new SES. They wanted to penalize her. "Do not agree that Verlyn was not penalized because of this lack of attention because she was rated exceptional. They wanted to penalize her. Every SES in the last decade has

received the highest rating, a Level I. She was penalized in the award area, monetary. There are all sorts of awards." (Id. P. 40, lines 1-4; RDecl, ¶ 203 -210, 211 Pro Act, RDecl, V-III¶s, 3-4.\\Andrews testified that he delegated the undelegable duty of convening authority to Newberry. V-IV AR 690-900-920, P. 37, and Apx E; P. 55. Newberry played in this role until Caldwell read Wynbelt's 2001 sworn statement. (Discussed below).

11. Contrary to Newberry's testimony that he would not do anything to impact Richards because he was not her supervisor, he attempted to control her from day one, Id Parnell affidavit, V-VIII, P. 14. **Richards states,**

"My first encounter with. Newberry, I believe about a week after I arrived, was when he walked in my office, and told me I was expected to work long hours, stay late. SESs do not have specific hours. I told him that unlike other SESs I was not married, liked to go home, and have a shower and then work at home in the evening. I told him if there was a meeting in the middle of the night, I would be there, but I was not going to hang around for nothing." RDecl, ¶204.Newberry told me that I would not be eligible for an SES Performance award because I had not been on board long enough. One year later he returned before the SES Performance Review Board (PRB) met to inform her that again she was not eligible for an award, because she was still receiving ES level increases. SESs can receive both a step increase and a performance award at

the same time. He forgot to mention that male SES BCHs still moving up levels were receiving both. Mehney, Schieble, Boyle, received awards, despite being 'brand new' SESs, and like Richards were moving from ES-I to. The level of the positions, "Executive Service (ES) level IV (ES-IV). (See awards received at Pl Ex 83 (E). Mehney received step increases and SES bonus every year, (V-VII (C), P. 54. CECOM Chief Counsel, Kathi Szymanski, was appointed to the CECOM Board her first year on the job.

12. Newberry initial rated civilian male SES BCHs and recommended awards. Members must not be directly subordinate to the executive, whose performance is under review. Apx E. 3, P. 55. § (5). Mehney, who received his SES approximately one year before Richards received hers (March 1996 was appointed three times. Schieble came from outside the Command as the selectee, Director of the IMMC, served less than one year before he was moved back to AMC headquarters, and was appointed... Pandu Rao, a minority, SES Director of TARDEC engineering, received his SES approximately one year after Richards, has been appointed to the PRB three times. Dr McClellan was appointed to the SES, approximately two years after Richards, has been unavailable to serve on the PRB. Boyle, the SES Director of the TACOM Commodity Business Organization (CBO), received his SES approximately four years after Richards received hers, was appointed two years in a row. All were awarded a level increase and a SES performance award for those years.

A second piece was a practice wherein the SES male BCHs, who had SES males working for them (TARDEC and ARDEC), turned around and awarded 'Special Act' awards to the SES males, who were not BCHs and therefore, except when appointed, did not receive a SES performance award . McClellan Awards affidavit, V-VIII, P. 57.

CGs and Newberry used the discriminatory performance award process as a vehicle to retaliate and discriminate, against Richards by adjusting the illegal policy and eliminating Richards from consideration by constructively demoting her, the only female SES BCH, from her position as a BCH to ensure male SES would receive an award. See RDecl, ¶¶180-182. "Beauchamp informed SES male BCHs that he did not consider her a BCH.

> "My first real "clue" that "hanky-panky" was going on...SES, Jimmy Morgan informed me he was in some meeting which I was excluded from before the PRB convened that Beauchamp decided that only (BCH) would receive a SES Performance... He believed Beauchamp did not consider me a BCH). The elimination of the Legal office "box" represents to me that Jimmy Morgan is correct in assuming Beauchamp has without telling me eliminated me as a "Business Center Head." This means Jimmy is correct in assuming the CG as early as this point in time decided that I am not to be considered for any SES performance awards. .... As much as I felt I had developed good relationships with Jerry, Jimmy, General Yakovac when he arrived, and Larry Schieble while he was with ...male counterparts were aware I was being treated disparately and

made no attempt to see it corrected. See Richards protected protest, August 12, 1998, I testified, ¶¶ 175-179; T, P. 19, Lines, 10-16., T, 3-434, V, XII, 395-434. I brought the subject up again during my first appraisal session with him, August 12, 1998. That would be for the rating year 1997-1998. I talked extensively about discrimination at that time. I talked about the rating again. I talked about seating again. When I engaged in protected activity August 12, 1998, during my appraisal review, I asked Beauchamp if he understood why I was using words, such as disparate and "similarly situated." I explained that these words were the legal language for discrimination. ...Beauchamp's response was exactly the same response Mr. Korte had given me, when I asked him to please help me, the spring/summer of 1996, and Mr. Korte had refused (and continued to refuse, despite his Senior Associate Counsel, Labour and Employment Law, Ms. Linda Mills, whom I also notified (a million times!), failed in her attempts to persuade him a number of times, that she believed from what I had told her, that the TACOM Commanding Generals were discriminating against me ...Id Mills' Decl, Pl Ex 54)

BCHs (white males) received monetary bonuses without regard to their performance including those newly appointed, Mehney, Schiebly, Boyle, similarly situated heads of TACOM organizations, who had off-site representatives, and had the same objective, to integrate their off-site representatives into their offices, were awarded SES performance awards, and other monetary awards every year as

compared to Richards, who had no control of supervision and rating chain They also received step increase, V-VIII, P. 54. 1997 -1998 Mehney and Schieble were members of the PRB Newberry $10,000. (He rated these men). PRB were General Guise (ARDEC Commander), Vic Linder (ARDEC), Mehney, and Schieble). No minorities were on the PRB violating SES regulation, and the ARDEC Commander was resisting Richards' rating off-site attorneys. Regulation states members must be chosen for neutrality... Next year, members of the PRB consisted of General Guise (ARDEC Commander), Joe Lehman ARDEC), Pandu Rau (TARDEC) and Gary Tull (the outsider from Headquarters AMC). Rao was the minority. Mehney and Newberry did not receive awards as they received presidential awards (lots of money). Salo PRB facilitator, T, 144-156, V-XII, 352- 364. High echelon SES Business Center Heads, repeatedly appointed to the PRB, had personal knowledge of the discriminatory policy, and failed to protest are subject to potential criminal prosecution, for using appropriated funds for purposes not intended. Richards and SES male counter-parts, positions, Senior Executive Service, Executive Level IV, are classified as equal in importance, whether their positions are heads of TACOM organizations, or whether they work for heads of TACOM organizations.

There are six levels in the SES. Quotas drive those who are ES-5 and ES 6... Chapin is an ES-5. His ES-5 goes to him personally and not to his position. He became an ES-5 when he worked for the PEO, and not when he worked for TACOM. Secretary of the Army is an ES-6. Richards' Documents, Section V,

Appraisals / Awards. SES regulations, AR 690-900-920, V-IV, P. 20.

PRB appointees include Mehney, who received his SES approximately one year before Richards received hers (March 1996 has been appointed to the PRB three times. Schieble came from outside the Command as the selectee, Director of the IMMC, served less than one year before he was moved back to AMC headquarters. He was appointed to the PRB. Pandu Rao, a minority, SES, Director of TARDEC engineering, received his SES approximately one year after Richards, has been appointed to the PRB three times. Dr McClellan was appointed to the SES, approximately two years after Richards, has been unavailable to serve on the PRB. Boyle, the SES Director of the TACOM Commodity Business Organization (CBO), received his SES approximately four years after Richards received hers, was appointed two years in a row, and was awarded a level increase and a SES performance award for those years. 1999 and 2000.

Mehney received an award for integrating off-site acquisition folks into his Business Center, where he was given full authority to supervise/rate. but the same recognition was withheld from Richards, despite awareness of the TACOM CGs of the difficulties she was having related to efforts to integrate because she was not given the tools of supervision and rating No minorities or women were represented on either of the PRBs for which he was responsible, despite C (8)" of the SES regulation

governing the SES performance award process requiring consideration be given to appointing women and minority members." The appointees were to be appointed "to assure consistency, stability, and objectivity in performance appraisal.
Beauchamp's senior rater bullets were missing from the appraisal. No panel member "caught" the "mistake.
Panel members were directed by the facilitator to review appraisals before meeting. Either no panel member, including the chairman, reviewed the appraisals, and therefore, was not aware the bullets were missing, or if they reviewed the appraisal and discovered this "mistake," did not report it, or reported it, or nothing was done to correct. If this actually was a "mistake," it would have damaged chances for an award.
Neither Andrews, nor Beauchamp recommended Richards for a performance award.
For the rating period 1999-2000 Caldwell recommended Richards for a performance award but she did not receive one. She was at her position's highest level, and therefore, was no longer eligible for a level increase.
In 1999, two months after Richards gave notice of intent to file her EEO Claim, and was still eligible for a level increase (Schieble had departed TACOM, and Mehney had reached his highest salary level, ES-4), Newberry directed that those eligible for level increases would not be eligible for Performance Awards. AMC four star Coburn's policy was that SESs eligible for a level increase would also be eligible for SES performance awards. Berry testimony ¶222 C. future as far as awards, and

as far as the appointments to the PRB, would be a big "zero," until the end of Caldwell's tour, 2001. (See ROI, My Doc Awards / Appraisals Index and §s V-I toV-14; P. 348; Pl Ex 83 (E)) I received it in April 2002, seven years after I assumed my position. This was after Caldwell read SES Walter Wynbelt's Declaration (Pl Ex 76) out in front of our Building 231, because as General Caldwell told Richards, he believed that he was taking a risk speaking to Richards at all see AR 690-900 Ch 920, ROI, My Doc Awards / Appraisals § V-5(a) P. 430 & 5 (b) P. 471 Pl Ex 83 (E) and AMC 'expert witnesses, Ted Berry and Tammy Salo. Caldwell informed Richards in the spring, 2001, that he had been told to "watch out for her" after she gave her notice of intent to file an EEO Complaint .and before he had assumed his TACOM tour. Caldwell (August 13, 1999-October 4, 2002.

CGs and Newberry directed the TACOM PRB to award, based on position, rather than performance. They eliminated all eligible SESs who were not "heads of TACOM organizations before the PRB convened unless they were appointed to the PRB, to ensure those preselected received awards.

CGs failed in their obligation as convening authority. Members of the PRB are selected by the CG. Andrews without authority to redelegate delegated selection of PRB members to Newberry, who was competing for the award money. (See convening authority, at SES Reg. AR 690-900-920, See ¶ 208, P. 94, AR 690-900-920, 1-3(m) ROI, My

Doc, Awards at Appendix, E-3, P. 37). :ROI My Doc. § V-5(a) & 5(b), Awards / Appraisals at Pl Ex 83 (E), index at P. 2 -6; and P.(s) 430 and 471) Andrews Dep at Pl Ex 37, Dep T, 3-75, V- XI, Pg(s) 83-101.

Richards, the first SES female at TACOM unlike new SES males, was not asked to participate as a SES performance Review Panel member for the 1995-1996, 1996-1997, 1997-1998, 1998-1999, 1999-2000 where, for example, in the 1995-1996 and 1996-1997 no minorities or women were represented (as required by SES regulation), and where for the 1995-1996 Board, her impartiality was assured since not having been at TACOM for a full rating period, she was not eligible for consideration, and therefore, her impartiality would have been assured. Richards did not receive a SES performance award, despite, her status as a BCH, and despite the CGs and or Newberry's predetermination that Business Center Heads were to automatically" receive an award. Id Wynbelt. Beauchamp, 70 Removals from the TACOM Org Chart.

SESs and GOs, who served or were serving on the SES Performance Review Board (PRB), were aware before the Board convened that the SESs who headed TACOM organizations, except for Richards, would be receiving the bulk of the SES "performance award money." They knew, or should have known that the process was "rigged" against Richards. SES appointees to the SES Performance Review Board chose to accept their SES performance awards or in the alternative, if they were not heads of an organization, their

"Special Act Awards" and be silent. SESs, BCHs, who received SES "performance" award, were repeatedly appointed to the PRB.

THERE IS DIRECT EVIDENCE THAT THE TREATMENT RICHARDS FACED WAS DIRECTLY CAUSED BY COMPLAINTS OF DISCRIMINATION. IN ADDITION TO MAKING A FALSE INCONSISTENT STATEMENT THAT "AWARDS ARE BASED ON DEMONSTRATED PERFORMANCE ABOVE AND BEYOND THE JOB, AND DEP, P. 126, Conscious decision to limit the bonuses for Richards? No not to my knowledge. T, Pg 68, Ln 11, T, 162-119, V-XII, P.(s) 93-104., and direct evidence of reprisal for Richards' protected activity Beauchamp testimony, P. 126, L.(s) 17-22, There could have been a decision not to put her on the PRB, because I approved the constitution of the PRB.

Beauchamp's testimony, demonstrates his bias toward Richards because of her protected protests and directly links his statement of bias to her protected activity. Beauchamp testified he failed to award her monetary performance awards and down graded her appraisal objectives because of her continuing complaints about disparate treatment in supervision, rating and TDA placement of her off-site attorneys and her VTC seat assignment, removing her as a BOD, Director.

Specifically, during the EEO investigation in this case, Beauchamp testified he failed to award Richards monetary performance awards and down graded her appraisal objectives because of her

continuing complaints about disparate treatment in supervision, rating, seating, and TDA placement of her off-site attorneys and her VTC seat assignment. "The basis for downgrading [Richards'] appraisal objectives and my reasons for not granting her any performance awards were that, Verlyn had difficulty accepting decisions that she disagreed with. She lacked understanding of her position as a staff officer. She lacked understanding of her role and the role of a Commander; Examples of issues she disagreed with are rating, TDA (Table of Distribution and allowances), seating, Can you give some examples of my complaining, other than matters at issue in my EEO complaint? A. No.

P. 131, L. 18, did you ever direct PRB panel to eliminate Richards from eligibility? Not true (Compare, Wynbelt, SES, who served twice on the TACOM Performance Review Board as the "required "outside (not from TACOM) member, once during Andrews' tour and once during Beauchamp's tour

Beauchamp stated, "Richards' performance was satisfactory. " P. 131,

Richards received her first award April 2002, seven years after she assumed her position, after Caldwell read SES, Wynbelt's affidavit-VIII, P. 55, Pl Ex 76, McClellan Awards, V-VIII, P... 57,out in front of our Building 231AR 690-900 Ch 920, ROI, My Doc Awards / Appraisals § V-5(a) P. 430 & 5 (b) P. 471 Pl Ex 83 (E); AMC 'expert witnesses, Ted Berry, T, 111-122, V-XII, Pg(s) 105-116; and Salo, PRB facilitator, T,

144-156, V-XII, 352- 364 ¶222 RDecl, V-III AR 690-900 Ch 920, ROI, My Doc Awards / Appraisals § V-5(a) P. 430 & 5 (b) P. 471 Pl Ex 83 (E).

Including a Board, which I now serve on, that reviews any high dollar awards (over $ 5000) to anyone in the command and the justification. Every male BCH was on it except me). by constructively demoting me as a Business Center Head, or possibly actually doing it without ever telling me and, thereby excluding me from the eligibility for the ill gotten gains.

Caldwell awarded Richards a $20,000 performance award for the rating period 2000-2001. Newberry retired.

Ted Berry, responsible for SES Management Conducts the Performance Review Board (PRB) at Headquarters. In previous years there was a word of mouth policy (from the four stars AMC CG, Wilson), that if one received a pay increase one could not receive a performance award (Mehney and Schieble received both. now the CG can give both in the same year. Scoring is a blind process. (According to Wynbelt's affidavit the TACOM PRB process was anything but blind....each appraisal is scored. Each member of the panel does see the names on all the appraisals) Amounts of money are then recommended for each. For Interim 690-900, Sub. 5 although expired is still used TACOM did not follow the correct procedure); Strive for inclusion of all SESs on PRBs (fair alternating).

Berry's answers contradicted SES regulation Q. Does not the regulation require that when it is

necessary because of the 50% on the number of performance awards to award to some senior executives and deny others in the same rating level (...where this occurs other means of compensating executives for whom allocations are not available should be explored.(See paragraph 4-3(d) " Special Achievement awards). A: No. Appendix A1©.s tats the opposite; Q. Does the regulation not require that executives who received no performance award in previous rating period (s) may be considered over executives with comparable current records of achievement, who did receive performance awards in the previous rating period(s)? No they can not be considered in that manner. Regulation states they may be considered in the manner described. See A-3.

Salo, PRB facilitator, considered all SESs from the different sites. All new SES males have been appointed to the PRB, Mehney, Rao, Schieble, and Boyle. PRB determines order of merit. Ranked one to ...; $$; number of people; whether both level increases and performance awards are given. (Verbal direction from the four star AMC Commanders, Wilson and Coburn were ignored by the TACOM CGs, and Newberry. That people can get up to level 4 through "step" increases. That dollar amounts are recommended to the CG who can either accept the recommendation or decide on his own (senior rater makes a recommendation to the PRB to begin with).

SESs that headed organizations are limited to Jimmy Morgan, Dan Mehney, Jerry Chapin, Larry Schieble 1999 followed by Tom Boyle a new SES this year and Richards.) Those members of the PRB included Newberry, Farkas (TARDEC), Mehney (a new SES),

Morgan (Director of ACALA), and Wynbelt (PEO, the outsider who did not work for TACOM but worked for SARDA). No minorities on the PRB per the SES regulation despite there being females eligible)performance awardees included Dan Mehney a new SES($5,000)who also received a level increase ,Doug Newberry, a member of the PRB ($10,000), and a few months prior received a special act award ($5000), Chapin ($9000) two of his top SESs were on the PRB., .
If a PRB member reviewed Richards appraisal when it was delivered, if it was delivered(late), during the PRB meeting, for the 1998-1999 rating period, and if he did an appropriate review and evaluation of Richards' appraisal, he would have discovered the fact that General Beauchamp's senior rater bullets were missing.

Salo facilitated 1998-1999 and observed in 1997-1998. She did not observe the process being carried out in accordance with the SES Performance award regulation. Wynbelt affidavit, 2001 discriminatory SES, award policy, V-VIII, P. 55.McClellan Awards, V-VIII, P. 57.
(Wynbelt's testimony there was a definite determination made last year that those eligible for level increases would not be eligible for a performance award. (Aware Richards had filed an EEO Complaint. Mehney was no longer eligible for a step increase; Richards was.). Beauchamp in his first rating, attempted to place Richards in the second level, less than exceptional. He testified, it was a "mistake." The mistake was he failed to grade her down on enough objectives. Compare, Chapin testified that in the last decade every sees has been rated the highest, "Level I."

Richards' appraisal was the only appraisal that did not get to the PRB until it was in session. Salo, testified, Yes, (true that Richards' appraisal for the year 1997-1998 did not get to the PRB before it was in session.

There was no time for the panel members to perform the mandated process to assure fairness (individual evaluations and rating prioritization

Richards received her first award April 2002, seven years after she assumed her position, after Caldwell read SES, Wynbelt's affidavit-VIII, P. 55, Pl Ex 76, McClellan Awards, V-VIII, P... 57,out in front of our Building 231, (because as Caldwell told Richards, he believed that he was taking a risk speaking to her at all) AR 690-900 Ch 920, ROI, My Doc Awards / Appraisals § V-5(a) P. 430 & 5 (b) P. 471 Pl Ex 83 (E); AMC 'expert witnesses, Ted Berry, T, 111-122, V-XII, Pg(s) 105-116; and Salo, PRB facilitator, T, 144-156, V-XII, 352-364 ¶222 RDecl, V-III AR 690-900 Ch 920, ROI, My Doc Awards / Appraisals § V-5(a) P. 430 & 5 (b) P. 471 Pl Ex 83 (E).

AUSA'S Third Action Rating Off Site Attorneys, SJHTs, pg 15, L. 10, "Plaintiff always had at least the amount of rating authority required by army regulation and procedure." She had letter input....for a while she was the intermediate rater she was always the final rater of all attorneys at TACOM. Pg 15, L. 16-18, the CG officers of those locations want to be the final raters of people on their staff and in the army, that's how it's done,

when it comes to legal. Compare pg 15, L. 22, plaintiff's final rater as chief counsel, TACOM was the Commanding General (CG); not the legal office at the HQs pg 16, L. 25, that's not the way it works; she was treated just like the males pg 17, she was treated in accordance in the regulation of department of the army. She was treated no different, an action... She was given more authority than she was required in matters of rating pg 17, L. 5-9, there's no discrimination or retaliation not to be allowed to be the final rater of somebody at an off-site location-now can that rise to the level of a hostile work environment?" How can that be an adverse personal action pg 23, L. 23-pg 16, L.9? Each of those organizations (TACOM's off-site locations) had their own legal staff with their local lead attorney. Richards wanted to be the primary leader for all these other attorneys on the off-site location. (**Note AUSA's description of rating scheme is wrong).

Sixth Cir buys in, 'these additional complaints include: not being allowed initially to serve as the ultimate reviewer of the work of off-site legal staff (who was instead rated by the commanding generals SUPERVISING their various areas of command and who did not desire to relinquish that supervisory control);

Supervisory and rating is an area / category with many 'acts", not an 'act,'

AUSA's representations are false. Army policy is that lawyers are supervised and rated by lawyers except SES Chief Counsels, who are not technically supervised. **P.** GS employees must be supervised and rated by a person with technical skills in the area supervised. GSSG. **P.** SESs are not in the General Schedule. P,

The CGs significantly disadvantaged Richards as compared to males including the former Chief Counsel, who were charged with the same task integrating off-site employees located at TACOM's newly acquired off-sites via the Base Realignment and Closure Act (BRAC), who performed the same function into their organizations to assist them with the newly acquired mission. P. See TACOM Legal Office Business Center V-V (A), P. 2; 3.

Richards' authority flows from the Army Counsel (GC), AR 690-300, Ch 302.7 §7-2. **P.** Army GC controls creating separate legal offices, **P,** CGs were without authority to deny Richards' express right to negotiate, establish, and control the supervisory and rating chains of TACOM's off-site lawyers even if TACOM had not been involved in the pilot program to create a geographically seamless command and he had not directed her to integrate those attorneys into her office, the first step in the integration process. Those rights/duties (technical direction, balance and prioritize work, reclassify positions, and discipline, were hers. When the BRAC Act realigned ARDEC, which used to be a MSC, into TACOM, not only did it lose its prior identity, as independent subordinate command, its legal office lost its right to act as an independent office. RDecl, ¶ 74, ¶ 75 & 76.

Richards testified, (General Andrews gave you your marching orders?) But he would not implement that. (What action did you take?) I told the attorneys I'd be rating them) (Number of attorneys?) Fourteen. None were SES?) Right. (What was their response?) Frank Cassidy said that Boddie talked with Andrews, and Andrews said it

would not occur that way. Andrews did say Cassidy would no longer be called the Chief Counsel. (See Richards Testimony at T Enc 1). Q. Correct me if I'm wrong. Andrews told you what your marching orders were and then his subordinate Boddie, Commander of ARDEC... (Didn't your subordinates Cassidy and Parise tell you to get lost?) Yes. Did you take any disciplinary action against them? No. ...I would not start a relationship with those I wanted to team on an 'I hate you' basis. Did you tell Andrews that Boddie said you were not going to rate them? I told Newberry.

AMC Command Counsel, SES, Korte falsely testified Richards was attempting to change Army policy. Pl. Ex. 34(a) at [27, L. 21 –P. 30) Compare Bacon's proposed memo for the Army Counsel, as sent to Korte, Pl. Ex. 22; Decl, ¶¶ 62-70. See violated regulations 'duties, terms of employment, P. 6, above. Compare, Senior OGC attorney confirmed that. Krewer could not have her own legal office. Krewer Aff, Pl. Ex. 27; ¶10, P. 5. Krewer early on asked Sando, a Senior Office of the Army General Counsel (OGC) attorney, the possibility of having her own legal office separate from the TACOM Chief Counsel. The OGC's answer was, "No."

> "Based on previous experience, it was not likely for a separate legal office to be approved within the same Command unit. . Sando (OGC) told me that it was Army policy that lawyers were to be rated by <u>lawyers except for the Head of the Legal office.</u> (Definition of Head of a legal office is Chief Counsel of an MSC (TACOM). AMC Reg. 600-Intro, Definition of Chief Counsel, I-5, (b) -2, P. 158. Sando said further that there had been a great controversy

over the establishment of a separate office at Rock Island Arsenal and that it was unlikely that a request for a separate office would be approved...it was preferable that both the ACALA and Picatinny (ARDEC) legal offices tie into the TACOM Legal office (TACOM Chief Counsel). Sando also told me that I could not use the title of Chief Counsel, since that title was reserved for the chief legal officer of a Command and not of its subordinate offices, which tied into the office of the Chief Legal Officer. Both the ACALA and Picatinny legal offices would be tied in to the TACOM Legal office structure. "(Id at Pl. Ex. 27 P. 5 Krewer affidavit I, at P.(s) 4-5, ¶10, Pl. Ex. 27, V-VIII, P. Krewer Aff I, DA Policy, Attorney rating, Dawes and Richards integration at Rock Island, P. 42.

Korte falsely testified Richards was attempting to change Army policy, when she presented him with a proposed memo to forward to the Army GC to remind heads of organizations of Army policy. Pl. Ex. 34(a) at [27, L. 21 –P. 30; Supervision and Rating, §; VII-19, P. 772; VII-20, P. 773)

See discussion infra, comparing Korte's oversight responsibilities to Richards' direct responsibility over all TACOM attorneys.

Although the CGs directed Richards, as they directed other heads of TACOM organizations, to integrate subordinate employees located at off-site locations realigned into TACOM (BRAC Act), who performed their function into their organizations, Andrews and Beauchamp, and other involved proxies retaliated against Richards for her

protected protests and treated Richards disparately by denying her the management tools that any manager of people expects, the tools of her "trade," expressly mandated by Richards' duties and agency regulations, even if TACOM had not been involved in the pilot program to create a geographically seamless command , right to negotiate, establish, and control the supervisory and rating chains of off-site lawyers; technical direction, balance and prioritize work, reclassify positions, and discipline, if necessary). **P.?** Richards testified,

> "What is the basis if discrimination? Rating and supervision; that was treated differently? Deputy for Systems Acquisition, Mehney. In rating chain for ARDEC. (Picatinny, New Jersey. The Army General Counsel retains control of SES Jersey). Where is Deputy for Systems Acquisition located? At Warren. He has Project Managers at ARDEC. . Mehney, Director of Acquisition, Deputy for Systems Acquisition and the Chief Counsel and the Director of the IMMC were the leaders who had representatives at other sites. Other comparatives? Jack Duggan (a lower level Chief in the IMMC). the former Chief Counsel Al Dawes. Why do you believe you are **similarly situated** to the CG? CG has his mission. He has representatives to assist him in carrying out his mission. He has the tools i.e. rating, supervision, prioritizing work, change duties, control funds for those who carry out his mission. What organizations were you trying to rate? Attorneys at Picatinny (ARDEC) and Rock Island.(Rock Island Legal Group was already integrated in to the TACOM Legal office during Al Dawes tour as Chief Counsel." **Compare**

disparate treatment,: Rating chains Legal, V-V-(B), P. 2; Acquisition Center (AC) (Contracting),V-V (B),P.(s) 6, 7-14; Industrial Material Management Center (IMMC (requirements /logistics, V- V-(B), P. 15; Deputy for System's Acquisition (DSA), V-V (B)), P. 18; TACOM Legal Office Business Center (Realignment), V- G (2) Pg(s) 3-4). Similarly situated, Executive Summary to Administrative Complaint, V-II.

When the BRAC Act realigned ARDEC, which used to be a MSC, into TACOM, not only did it lose its prior identity, as did its legal office and its former 'Chief Counsel,' Francis Cassidy. An MSC cannot have two Chief Counsels. Compare, Bacon's proposed memo for the Army GC as sent to Korte, Pl. Ex. 27, with Army policy at AR 690-300, Pl Ex 5. Richards' title, "Chief Counsel" is applicable only to the Chief Counsel of a MSC Legal Office. Intro. Definitions at 1-6 (b), P. 1-2, at DA HQ US AMC -R 690-2, Pl. Ex. 35. Compare to Army Policy, "[O]nly the GC of the Army has the authority to create a new agency legal office. Whenever a civilian attorney is removed from under the immediate supervision of another attorney that is the equivalent of creating a new agency legal office, AR 690- 300, ch. 7, Pl Ex 5.

Dawes testifies,

"TACOM was in the midst of the process of integrating the off site locations when he retired. Involved heavily in the issues related to the off site attorneys. You might say I led the planning in that area. Involved in devising the rating scheme for off site lawyers. We considered all the

options. The MOU was a compromise agreement. There were a number of proposals on the table in conjunction with assembling the formal way that integration would occur. A proposal had been made that would have. Husson (Director of ACALA) the rater. Did not find this acceptable. It ended up with my Warren Business Chief being the rater/immediate supervisor of Kay Krewer. I was the senior rater. The compromise was that. Husson became the intermediate rater. V-XII, T, 179--215, V-XII, 172-181; See MOU, setting the terms of the agreement, V-V (B), P. 2.

Krewer, Chief of TACOM-Rock Island (ACALA) Legal Group addresses the participation of the Deputy Chief Counsel, Bacon and Krewer in Dawes' planning,

"Through discussions with. Dawes and Ms. Bacon, a plan was devised for the ACALA Legal Office to become a branch of the TACOM Procurement Law division (in Warren). The immediate supervisor / initial rater would be. Allan Kalt, Chief of that division. . Dawes would be the senior rater. Husson, the Director of ACALA at the time would be the intermediate rater. That this would give some influence from the ACALA site. For the subordinates in my office I would be the immediate supervisor and. Kalt would be the senior rater. SEE DA Policy Krewer affidavit I, V-VIII, P. 42. P. (s) 4-5, ¶10, Pl. Ex. 27; Attorney rating, Dawes and Richards integration at Rock Island, P. 42. Supervision cannot be separated from rating. GSSG, P. (2); See Duties, P, involved 'acts' violated applicable agency regulations with a direct nexus to Richards' express duties based on those regulations. P, 1996 to the present, proxies withheld Richards'

supervisory (technical supervision, balance / prioritize work load and spaces, reclassifying positions, moving manpower spaces, and discipline, if necessary), initial and senior rating authority over off-site attorneys at the moment the off-sites transferred to TACOM (except Krewer until Beauchamp illegally withdrew it, October 7, 1998. (Discussed below).

Contrary to Andrews' and Beauchamp's false testimony, they decided Richards would supervise and rate off-site attorneys, and directed her to inform those attorneys in compliance with regulations. In response to Richards protected protests they harassed Richards and changed their position without informing her, and falsely testified to material facts. CGs and those involved harassed and subjected Richards to public humiliation by playing deceitful mind games and setting her up to be publicly humiliated and rejected by the off-site Commanders and attorneys by directing her to inform the lawyers she would be their boss and would be supervising and rating them, and telling the subordinate BCHs, Commanders at the off-sites they never said such a thing. Andrews informed the ARDEC Commander, General Boddie, he was not going to allow Richards to supervise or rate the ARDEC attorneys without informing Richards he changed his mind, despite Richards checking with him immediately before she left on her first trip to ARDEC, .. See, 'Boddie, ARDEC Commander 1996-April 1997) (See ROI My Doc at Pl Ex 83 (D), Animus § IV-11, P. 293). Richards did not learn this until the ARDEC attorneys told her, P. 20. Boddie refused to meet with Richards, despite her trip being timed for his

availability. He never apologized. Cassidy, ARDEC legal office 'Chief,' whom Mills charged with discrimination, when she worked for him. Id, Mills Aff, V- VIII, Pg 20, said Boddie was not available. Id P. 20. He told Richards to go home and leave them alone. Richards' Tes, T, V-XII, Pg(s) 1-40.

CG Andrews falsely testified that he never told Richards she would supervise and rate the ARDEC lawyers. Contrary to Andrews' false statement, he directed Richards to tell the TACOM-ARDEC, attorneys that she would be their boss, and would be supervising and rating them, and as he testified gave Mehney, who had rating authority as an example. ""I did not tell her to bring it out of supervision. She was given a "staff assignment,"

> "My main objective was trying to integrate into one TACOM and everybody in it with as many common programs/ common procedures as possible. ACALA (TACOM-Rock Island) was more receptive of taking direction. ARDEC had resistance. I discovered and knew that from the get go. ACALA (Armament Chemical Acquisition Logistics Activity) had no capability of operating on its own. ACALA was a real problem. It was not a functioning organization. This took place before I got there. Verlyn was the Head legal person. She was directed to integrate the legal offices. I told Verlyn what I would like to have done. I gave Verlyn guidance to go to ARDEC and try to integrate them. I told her to integrate the legal offices in to one.

Rating was a major issue. I did not tell her to bring it out of supervision. Verlyn was given a staff assignment. I was taking very diverse locations and trying to make them in to one team. I gave Verlyn the example of one Acquisition Center under Mehney. Significant stride were made in the Acquisition Center. The procurement function is very specific as to what they can do and what they could not approve. Left TACOM July 1997.Prior to leaving, I gave no specific guidance. Rating would be the ultimate goal. Told Verlyn what I would like to have done. It would take years to make the three legal offices in to one. She had adequate assistance in accomplishing the task of integration. Told Verlyn to bring any contentious problems to Doug any difficulties in trying to integrate the three legal offices. Recall a conversation about the Chief Counsel rating attorneys at the two Commands. Never said such a thing. Told her that rating may be the ultimate goal. Never told her that she would rate the lawyers. (Do you not remember, Sir, that just prior to my visit to ARDEC (August 1996) I asked you if I could tell the ARDEC lawyers that I would be rating them and you said yes?) I did not say that I said it may be the ultimate goal. Andrews' Testimony, Pl. Ex. 21, ROI Tr. Enc. 2 at 153, Lines (Ln.) 9 - 12).

Compare, Deputy Chief Counsel, Bacon testified,

> "Recall Richards telling me prior to the ARDEC visit that Andrews told Richards that she could tell the ARDEC lawyers that she

would be rating them." T, Pg, Ln(s) V-XII, Pg(s) 69-91 at Pg; Id RDecl, Pg 107, ¶259-Pg 113, ¶ 277. Krewer Aff, V-VIII, Pg 69-79 at Pg).

Richards testified,

(Had you ever taken a proactive approach, put something in writing for the General's signature? No. I talked with Newberry. Beauchamp told me to work it out with General Arbuckle. I told Newberry that Arbuckle would not talk with me. Finally, Arbuckle gave me thirty minutes. He said the Commander needs his own lawyer. Did you tell Beauchamp that? Yes. I told him that Arbuckle said there were two CGs at TACOM, Beauchamp, and Arbuckle.

9/18/97 (CG Beauchamp Tour) Decision Is Not Yet Made,

Boddie and Arbuckle acting as the immediate supervisor / initial rater violate GSSG **P.** & Army policy. **P.** Arbuckle's tour as the ARDEC Commander began a few months before Andrews' tour ended, and Beauchamp's started, July 1997. Newberry told Richards he was still working on Andrews. See Cassidy emails, 9.9/97- 9/15/97 (Cassidy. to Richards to Newberry). Newberry confirms we are still working rating chains, and states Richards should be senior rater__ contradicts Andrews 'false testimony, V-V (B), P. 28. See email, 9-9-97; 9-15-97, 9-18-97; 12-2-97 t0 1-20-98, ROI My Doc at Pl Ex 83 (G) §. VII-21, Supervision / Rating, Pg 779. September 1997, Richards emails Army Policy Draft to Korte for Army GC (Richards still not in ARDEC rating chain), V-V (B), and P. 24. Beauchamp informed Richards in the first meeting she would be either the initial or senior rater,

and directed Richards to work out the rating issue with Arbuckle. He said General Officers and SESs are supposed to be capable of taking care of things like this without him. He said if they could not work it out, he would decide. Emails,9/18/97, Richards to Beauchamp, Beauchamp to Richards, CF Arbuckle and Newberry, Richards explains AR 27-26, and why she has be the initial and senior rater of Chiefs and senior rater of subordinates (same as Dawes), V (B), P.(s) 28-31. Arbuckle responds" strong feelings." ...by passes Richards during orientation in Warren__ V-V (B), P. 30.; __contradicts Andrews and Beauchamp's false testimony that they told Richards in the first meeting that she would have "staff supervision" (right to coordinate); 12/16/ 97, Appointment set up with Arbuckle. He will give Chief Counsel 30 minutes.

Compare,
Bacon states, "Sometime after August 1998 (October 7, 1998), I was talking with Richards in her office when Newberry came in. He told us that Beauchamp was fed up with the issue of lawyer's rating chains and had decided that Richards would be the intermediate rater of all non-Warren located TACOM lawyers. I remember telling Newberry that I had been at the meeting (9/17/97), and heard Beauchamp tell Richards that she would be either the initial or senior rater. "Aff, V- V-VIII (9), P., 27, P. 2. (See Bacon Declaration at ROI, My DOC, Animus, § IV- 14, P. 304 at Pl Ex 83 (D); Testimony, V-XII, Pg(s) 41-64; T, 66-89, at 73, L. (s) 6-10.

Arbuckle refused to talk with Richards. He failed to respond to Richards' telephone calls, despite being directed by the CG through the Deputy to call and

discuss rating attorneys with Richards. **Compare, Bacon testifies,**

"Beauchamp told Richards she would be either the initial or senior rater of TACOM- ARDEC attorneys and to work it out with Arbuckle." ..." It was almost impossible to get General Arbuckle to speak to the Chief Counsel all. It took about six months for one conversation to take place. As I recall Arbuckle limited the conversation to 30 minutes." ....."Participated in a teleconference, which took place with Arbuckle. (See Bacon's draft to CG from conversation with Arbuckle; 1 / 20/ 98 emails to Beauchamp and Newberry from conversation with Arbuckle P. V-V(B), P. 31. "My DOC" Rating, VII-25, 12-15-97, memo of record, teleconference with Arbuckle. VII-26; VII-27, VII-28); VII-25, 12-15-97, t Pl Ex 83 (G) § VII-27 and § VII-28) (See also VII-26; VII-27, VII-28).

Compare Email of Conversation with Commander of ARDEC, Arbuckle, and Arbuckle testimony, Pl Ex 41, T, 41-64, V-XII, Pg(s) 17-40.

> "General Andrews was first rater and senior rater. Beauchamp took over in August 1998.ARDEC was already under the umbrella of TACOM when he arrived. Recalls discussion on possible rating of the ARDEC Legal Office by the Chief Counsel. General Boddie told him prior to assuming command that one issue had surfaced. Boddie had objected and told him it would likely come up. Arbuckle strongly objected to it and passed it on to Brigadier General Guise who followed him. Told Beauchamp that he, Arbuckle, expected Beauchamp to support him. His reason was that his office was a Commander. In additional to command responsibilities he could

be personally liable if things go wrong. He was also responsible to tenants and the input for the legal staff to work directly with them. Cannot have a perception of divided loyalty. Had worked at a Depot before. Familiar with legal issues. You have to work with your lawyer. Did not want any situation where his legal staff was diverted and answering to someone else. Realizes the technical chain has to exist, technical advice, career advice coming from the Chief Counsel. As far as rating and control and who does what that he had to have it. The lead ARDEC counsel was Frank Cassidy. Viewed him as if he were Chief Counsel Does not recall. Cassidy's specific title. Thinks it was Chief Counsel. Had reservations about the Chief Counsel. Technical letter input was okay. Did not have a problem if she were the intermediate rater. Did not do any direct business with Ms. Richards. Had no face-to-face meetings on rating with her. At initial orientation September 1997 got one from legal (Cassidy) Recalls the word was being put out that the Chief Counsel wanted to talk about rating. Getting information from different people. Intended the conversation to be short. Knew he would not agree. Agreed that she had technical responsibility but he needed to assign the work. Did not want others assigning the work. Got feedback from TACOM after his discussion with the Chief Counsel. Told that it sounds like he did not think he was part of TACOM. Conversation with the Chief Counsel took place December 16, 1997.Believed there was someone else present because he heard voices in the background. ...No reservations sharing his convictions with General Beauchamp.

Told General Beauchamp more than once that if he was not going to support him he questioned why Beauchamp needed a Commander at ARDEC at all. Never got a clear answer. Since Beauchamp never took any action he assumed Beauchamp had supported him. The issue never died. Kept getting feedback that Ms. Richards was still working it. Beauchamp never changed anything he guessed Beauchamp supported him... Observed working relationship between Beauchamp and Ms. Richards; No different treatment. Heard her make comments at the BOD that were not relevant to legal issues. They were mission-related issues **(Chief Counsel is obligated to give business advice AR 27-1).P.** Had a dialogue with Beauchamp, maybe Newberry, who asked him to speak with the Chief Counsel. Spoke to Korte. (Asked Korte if there were any other cases where a Chief Counsel (speaking about. Cassidy) was not rated by a CG.) "No. (Any reason for Richards to get feed back from people that he hated me?) No. (Was he aware that prior to his taking command? Cassidy's title was changed from Chief Counsel to Chief of the ARDEC legal office because Richards was the Chief Counsel?), No. (Was he aware that on paper, TACOM regulation that Richards was his Chief Legal advisor and not. Cassidy?) No.(Was he aware that Army Reg. 27-1 at Chapter 5-2 states that one of Richards' functions is to supervise attorneys and that paragraph 5-2(2) , one of her functions is technical supervision of JAGC officers(Judge Advocate General Corp), civilian attorneys, legal technicians... LOCATED IN THE HEADQUARTERS OR ASSIGNED TO SUBORDINATE COMMANDERS?)

"No". (General Arbuckle then returned on his own to a previous question, any reason for Richards to get feedback that he hated her?) Got feed back about the teleconference from the Command group that he was not a team player.

Mehney testified,

"**A**ware of conversations about Verlyn's wanting to rate the ARDEC lawyers. Verlyn wanted to. Arbuckle didn't want her to rate. This took place over a period of time.

Beauchamp inconsistently testified, "Did have a discussion with Arbuckle prior to his decision. Agreed with Arbuckle. Attorneys need a close operational relationship with the Commander.

those attorneys to Richards' Table of Distribution and Allowance (TDA) (control of manpower spaces, funding for salaries, promotions, training, travel, awards, ability to reclassify positions),a category AUSA fails to address, as they advantaged male counterparts and thus violated regulations with a direct nexus to Richards' express duties, P. six.

AUSA's fourth act is an "act" within the broad category, Supervision / Rating; and (3) TDA realignment, CGs refusal to place off-site attorneys on Richards' Table of Distribution and Allowance (TDA),

Compare Mehney learns about PBG and QDR cuts at ARDEC AC, addresses his MOU with ARDEC.

and assign those attorneys to Richards' Table of Distribution and Allowance (TDA) (control of manpower spaces, funding for salaries, promotions, training, travel, awards, ability to reclassify positions), as they advantaged male counterparts.

Richards combines (1) AUSA's Third misrepresented Action,
Associate 'Chief,' Parise TACOM-ARDEC's Associate Chief Counsel, Mr. Robert Parise testified,
"Have been Associate Chief of TACOM-ARDEC Legal office (New Jersey) for two years. Have been an attorney in the office since 1982. Cassidy never voiced the reason that it was because the Chief Counsel was female. Do not recall Cassidy making negative comments about the TACOM Chief Counsel. , Discussed the rating issue with Mr. Cassidy on a number of occasions; Mr. Cassidy was not in favor. When I first arrived ARDEC was an MSC with a two Star general. ARDEC later became part of AMCOM (later called the IOC, Industrial Operations Command) and now the OSC (Operations Support Command). (One star general). Tony Sconyers was the Chief Counsel In the last Major organization ARDEC was transferred to TACOM. Frank Cassidy, the Chief Counsel was not in favor of being rated by the TACOM Chief Counsel. Cassidy discussed it with the different ARDEC Commanding Generals. The comment back to Cassidy was that it was above his pay grade that it was going to be decided among the

General officers. Based on my discussion with Cassidy neither commander was in favor of it. Cassidy believed that the way it was already organized with him as the Chief Legal Officer made the legal office more responsible to the CG (ARDEC)." V-XII, Pg(s) 341-350, T, 19-26.

Beauchamp made one of his many false statements that he never told Richards to tell the lawyers she would be supervising and rating them, which was contradicted by the Deputy Chief Counsel,, who was present at the time he directed Richards to inform the attorneys she would be the initial or senior rater.

Compare to Andrews Tes, above, and to Richards' direct duties, to supervise attorneys, and act as the Chief Legal advisor to all heads of TACOM organizations, no matter where located.

Compare Beauchamp Dep Tes, Q, Is it your testimony that the off-site locations were separate legal offices of TACOM A – They were separate and they were off-site. Dep T, P.72, Compare scope of Richards' duties, **P...** to, Beauchamp Dep T, P. 85 - L. 2, Richards was the rater and the final rater of the people in her office at Warren. T, P.85 – L. 17, they were separate subordinate commands. Q. Duties to manage legal office through supervision of subordinate supervisors T, Right. P. 136, Saying Legal office are limited to Warren office. Are you saying Army established separate legal offices in offsite locations at TACOM, T P.136, L. 21, Did Richards identify the AR -that identify how DA established Legal offices, Only Counsel of the Army can established a legal office within subordinate command (AR 690-300 Ch 302, at 7-3, T, P.137, L. 14, **Are you saying you took it upon yourself to establish**

subordinate legal offices within TACOM— I did not. P.138 - L. 1, did you ever **remove a civilian attorney from underneath. Richards' supervision--Not that I recall.** Q, Is it your testimony that the off-site locations were separate legal offices of TACOM a – They were separate and they were off-site. Dep T, P.72, Compare TACOM-PEO Organization Charts, 1996 to 1999... Off-sites prior independent identities and became an integral part of TACOM (Charts &, integrating business processes across sites).V-V(c), P.33. -39 (Circled Top Center) TACOM -Rock Island Legal Group (Krewer) on DLCM TDA violates AR 27-1 TACOM Legal; Office Integration, P. 28.

See Beauchamp, Tes, attempts to say – separate legal offices." by group and by organization, L. 5-7, "No they were not (part of the TACOM Chief Counsels legal office – they were part of the office of the activities. Beauchamp uses TDA as excuse. States – Anniston had an officer in legal invested authority and responsibility for the command... P.74 – L. 11, Product of off-site legal offices was legal advocacy. P.75 – L. 1 asked if Richards can overturn legal decisions at off-sites. An: "authorized to question those decisions. I would have responsibility for communicating with Commanders of those active and advising the commander; Richards makes all final TACOM legal Decisions, PD, V-IV, P. 203, ; Q., Did you provide Richards technical legal supervision A: – Obviously, I have no capability to provide her technical supervision (if to seek other advice). Beauchamp Dep, T, P.77, P.82 – L. 3. Relied on Korte saying no policy. T, P. 82 – L. 22, When did you make that decision I didn't think it (rating), necessary or appropriate for her to discharge her responsibility as what he describes as a role of staff

supervision although there is no such thing.. Compare:, Dep T L.(s) 4-6, Richards has authority for staff supervision (to the Schedule Supervisory Guide (GSSG,) V-IV, P. 127, Supervision over employees in Schedule (GS-1 to –GS-15 requires that the immediate supervisor be the initial rater, one supervisor per employee with technical competence in area supervised. Supervisor must spend 25% of time supervising).

October 7, 1998, Beauchamp removes Richards as supervisor / initial and senior rater of Krewer; and designates Richards intermediate rater (token rarely used) of off site attorneys without informing Richards, and violates Army policy, AR 690-300, Ch 302.7 §7-3, a & b, by creating separate legal offices, governed by supervision and rating chains, and authority is retained by the Army Counsel. Newberry Oct 7, 1998 announcement Richards is intermediate rater of all off- site attorneys; Beauchamp withdraws Richards' authority to immediately supervise and rate Removal as supervisor / initial and senior rater, K. Krewer, and violates Army policy,' created separate legal offices w/I TACOM. Nc authority to take this action; violates Army policy only Army GC has this authority AR 690-300 ch 7. P. 10. Separate legal offices is governed by supervision and rating chains; authority retained by the Army Counsel (GC),' AR 690, Ch 310, §7-3, a & b, P. P. 5. See Beauchamp's material false statements in his Fact Finding Conference (FFC) testimony summer 2000 and deposition testimony 2004, despite being shown a number of regulations. Beauchamp falsely testified, "Told Richards in our initial interview (July 1997), she had unlimited license to coordinate with the off-site legal offices because her function is a function clothed with the authority through the Commander. Took under advisement.

Richards' request and concluded it was not necessary to allow her to rate the off-site attorneys. T, P.23, L. (s) 22-P.24, L. 24. As far as rating attorneys in subordinate offices ARDEC and ACALA s (TACOM-Rock Island) chain I looked at the mission and then talked to Ed Korte. Ed Korte said that he found no policy that directed Beauchamp to put. Richards in the rating chain; Pg 38, L. 14-16,) ...In correction, I said I was aware that you were in the rating scheme for the attorneys at the Rock Island site (immediate supervisor, initial and senior rater).L. 22, Pg 38, I disagreed with that for the reason's I stated) P. 26, L. 3 through 6. From an operational perspective I thought that the lead counsels at those organizations needed to bond. There is a difference between that relationship and the Chief Counsel's duties. ...The legal staff has no similar role as a staff officer with staff over sight. Decision to make her the intermediate rater was never based on sex. (See Enc.1, Pg 38, L. 14-16, 28, Pg 26 (3-6)... Did have discussion with Arbuckle prior to decision. I agreed with Arbuckle. Attorneys need a close operational relationship with the lawyer. Looked at the mission and then talked to Ed Korte. Ed Korte said that he found no policy that directed Richards to put Richards in the rating chain. Told Richards she had unlimited license to coordinate with the off-site legal offices because her function is a function clothed with the authority through the Commander....I took under advisement Richards' request and concluded it was not necessary to allow her to rate the off-site attorneys. Thought that Arbuckle and Jimmy Morgan should rate senior lead counsels.

Thought Commanders need to bond with their lead counsel (Richards is their lead counsel) in order to deal with issue. A lawyer's independence from those

they advise is the way of life for any lawyer. In the Army environment it's a must. Neither Korte, nor any one else has technical supervision "direct" supervisory authority over MSC SES Chief Counsels. TACOM Chief Counsel has direct supervisory authority over all TACOM attorneys, wherever located. DA does not assign TACOM's GS attorneys; TACOM SES Chief Counsel does that. Compare disparate treatment,: Rating chains Legal, V-V-(B), P. 2; Acquisition Center (AC) (Contracting),V-V (B),P.(s) 6, 7-14; Industrial Material Management Center (IMMC (requirements /logistics, V- V-(B), P. 15; Deputy for System's Acquisition (DSA), V-V (B)), P. 18; TACOM Legal Office Business Center (Realignment), V- G (2) Pg(s) 3-4). **Similarly situated**, Executive Summary to Administrative Complaint, V-II. The non-attorney CGs are limited to administrative 'supervision' over MSC Chief Counsels Only the Army GC, the proponent of those Rules, can make an exception. Nowhere is there an exception authorizing a non-lawyer to 'demolish' the independence a lawyer must have. A request for an exception will be submitted through the requesting attorney's legal supervisory chain." AR 27-26, V-IV, P. 9. Part C. TACOM Integration, 1994- May 1996) (Andrews), ¶s 36-43, pg 16 -19; Part D, male leaders, heads of TACOM organizations, planned and negotiated rating chain, ¶s 44-45, pg 19, ¶s 46-74, pg 19-30; discrimination & reprisal (background A. Richards' express duties and regulations mandated she have this authority even if there was no integration. See TACOM Chief Counsel's materially altered terms, conditions, benefits and privileges of employment, RDecl, ¶s 87-109, ¶s 114, and above. Revisions to TACOM regulation10-1 (1996 and 1998) are clear as to Richards' role as Chief Legal Adviser

to the TACOM CGs representatives at the off-site locations. Richards is not just Chief Counsel at Warren, Michigan, Duties with respect to TACOM's off-site locations are "direct," rather than over sight. DA, Richards' one and only 'client, assigned Richards to its designated SES space, TACOM Chief Counsel, at the TACOM, a Major Subordinate Command (MSC), (the only type of supervision there is for Richards' subordinate TACOM civilian attorneys all in the Schedule (GS), GSSG (discussed below). Integration became a critical objective, in the TAPES / Appraisals of the CGs and TACOM leaders, who had incoming off-site employees, which performance was evaluated against, including Richards.¶ 62, RDecl, Mehney was no more restricted as far as supervision and rating of his off-site than Richards, Actually less. A number of commanders, maybe all, had fulfilled the qualifications for technical competence in the contracting area. Newberry had no experience in that area and could not become the official Deputy until he took a six week course, the basics. RDecl,¶ 65, Army policy which mandates that Contracting Officers not be rated by requirements types, AFARS 1.697, also mandates Army lawyers not be rated by Directors of Contracting or their equivalents. Compare AR 27-1, Ch. 15-3(c) (3)at Pg 43 at Pl. Ex. 40; ROI, My Doc, Duties § III-6(a)., Richards must ensure subordinate lawyers conform to professional responsibility rules in AR 27-26, RDecl, ¶ 63, this includes ensuring not they are not placed in situations with potential for "undue influence." Compare Beauchamp Dep T, P.72, to Andrews Tes, to Richards' direct duties, to supervise attorneys, and act as the Chief Legal advisor to all heads of TACOM organizations, no matter where located. Contrary to Korte's testimony that he

understands the TACOM CG's subordinate commanders wanting to have the allegiance of "their lawyers" to them, and contrary to Arbuckle's, testimony, an Army lawyers' loyalty /allegiance is to his / her client, Department of the Army. Korte reneges on his February 10, 1998, promise to go to the Army GC with Army policy memo and tells Beauchamp and Newberry they can do what they want V-V©, P. 9.

Discriminatory Motive.

Beauchamp testified, "In making the decision I looked at special staff officers. (In comparison)". Mehney was the Principal Assistant responsible for contracting, who is directly responsible to me (role as HCA (Head of the Contracting Activity). There is a difference between that relationship and the Chief Counsel's duties. Saw it as a different relationship with a staff officer, a distinct difference. As the Principal Assistant Responsible for Contracting (PARC), Dan Mehney has to give technical direction to every contracting officer. The legal Staff has no similar role as a staff officer with staff oversight. My decision to make her the intermediate rater was never based on sex.

Compare Beauchamp's false statements, V-XII. (4), P. (s) 92-126. P. 65 – Ln 4, Complaint, 18E (Not True), Ln 14, I have never directed Verlyn to inform her off site attorneys she would be supervising them and never implementing decisions... I never precluded Verlyn from discharging her responsibilities **under guidance that I gave.** T, P. 67 Ln 16, She would provide staff supervisor **unlimited coordination to provide written input to me or the commanders.** Ln(s) 18-21, I never made decisions and then didn't follow up to take actions and implement.

THERE WERE NO LEGITIMATE REASONS FOR the CGs" ACTIONS.

TACOM Chief Counsel has direct (supervisory) not oversight responsibility for attorneys at those locations, Summary of Duties in every appraisal, V-IV, Part IV, P. 5.

Contrary to Andrews' assertion that integration of the off-site legal offices would take years as opposed to the other o organizations, as a reason for his failure to give Richards the supervision and rating tools to accomplish it, a few positive changes at ACALA went a long way. Krewer, Chief of TACOM-Rock Island Legal Group, stated, "In subsequent months (after Richards became the Chief Counsel) the ACALA Legal Group was made a separate division of the TACOM Legal Office. My position was upgraded to a GS-15 (equivalent to the other Chiefs in the TACOM Legal Office).Two of the GS-13 positions were upgraded to GS-14s. An additional slot was added to complete the ACALA Legal Office with a Labor Lawyer. Richards became Krewer's immediate supervisor/ initial and senior rater, as she was for TACOM-Warren Chiefs. Richards became the senior rater for Krewer's subordinates. We moved in to new quarters in January 1997. Krewer Declaration, Pl Ex 27, V-VIII, P. 42.

Beauchamp's material FALSE statements in his Fact Finding Conference (FFC) testimony summer 2000 and deposition testimony 2004, despite being shown a number of regulations.

Beauchamp testified,"

Did have discussion wit Arbuckle prior too his decision. I agreed with Arbuckle. Attorneys need a

close operational relationship with the Commander. Arbuckle Testimony, at Pl Ex 41...Looked at the mission and then talked to Ed Korte. Ed Korte said that he found no policy that directed Richards to put Richards in the rating chain. Told Richards she had unlimited license to coordinate with the off-site legal offices because her function is a function clothed with the authority through the Commander....I took under advisement Richards' request (October 7, 1998)and concluded it was not necessary to allow her to rate the off-site attorneys. Thought that Arbuckle and Jimmy Morgan should rate senior lead counsels. Thought Commanders need to bond with their lead counsel (Richards is their lead counsel) in order to deal with issue. In making the decision I looked at special staff officers. (In comparison). Dan Mehney was the Principal Assistant responsible for contracting, who is directly responsible to Richards (role as HCA (Head of the Contracting Activity. There is a difference between that relationship and the Chief Counsel's duties. Saw it as a different relationship with a staff officer, a distinct difference. As the Principal Assistant Responsible for Contracting (PARC), Dan Mehney has to give technical direction to every contracting officer. The legal Staff has no similar role as a staff officer with staff oversight. My decision to make her the intermediate rater was never based on sex. Korte is not the rater or senior rater of Richards. (Beauchamp. Tes. As far as rating attorneys in subordinate offices ARDEC and ACALA s (TACOM-Rock Island) chain I looked at the mission and then talked to Ed Korte. Ed Korte said that he found no policy that directed Beauchamp to put. Richards in the rating chain;...See Enc.1, Pg 38, L. 14-16,) ...In correction, I said I was aware that you were in the rating scheme for the attorneys at the Rock

Island site (immediate supervisor, initial and senior rater). L. 22, Pg 38, Beauchamp states, I disagreed with that for the reason's I stated) P. 26, L. 3 through 6. From an operational perspective I thought that the lead counsels at those organizations needed to bond. There is a difference between that relationship and the Chief Counsel's duties. ...The legal staff has no similar role as a staff officer with staff over sight. . Decision to make her the intermediate rater was never based on sex. Pg 26 (3-6); 28, T, Pg 38, L. 14-16, Richards reads Army policy to Beauchamp.

Beauchamp testified,

> "Told Richards in our initial interview (July 1997), She had unlimited license to coordinate with the off-site legal offices because her function is a function clothed with the authority through the Commander. Took under advisement Richards' request and concluded it was not necessary to allow her to rate the off-site attorney, , T, 62-119, V-XII, Pg(s) 93-104, At P. 108; , V-XII, T P. 23, Ln(s) 22-P. 24, Ln 24.] , Dep, T, 5- 189, V-XI, Pg(s) 102-149,T, P. 65, L. 4, Complaint, 18E (Not True), L. 14, I have never directed Verlyn to inform her off site attorneys she would be supervising them and never implementing decisions... I never precluded Verlyn from discharging her responsibilities under guidance that I gave. T, P. 67 L. 16, She would provide staff supervision unlimited coordination to provide written input to me or the commanders. L. (s) 18-21, I never made decisions and then didn't follow up to take actions and implement. Dep, T, 5- 189, V-XI, Pg(s) 102-149. **Compare Beauchamp's false statements, V-XII. (4), P. (s) 92-126. P. 65 – Ln 4, Complaint, 18E (Not True), Ln 14, I have never**

directed Verlyn to inform her off site attorneys she would be supervising them and never implementing decisions... I never precluded Verlyn from discharging her responsibilities **under guidance that I gave.** T, P. 67 Ln 16, She would provide staff supervisor unlimited coordination to provide written input to me or the commanders. Ln(s) 18-21, I never made decisions and then didn't follow up to take actions and implement.

Beauchamp's false testimony contradicts Andrews,' testimony and Newberry's email to Richards (Emails, 9.9/97- 9/15/97, Cassidy, Chief, ARDEC Legal, to Richards to Newberry to Richards, 9/15/97, V-V (B) P. 28, 9/18/97emails, Beauchamp to Richards CF Arbuckle. 9/18/97 Richards response to Beauchamp and Newberry. Explains AR 27-26, and why she has to be the initial and senior rater of Chiefs and subordinates as Dawes) V-V(B), P. 30-31; Arbuckle responds to Beauchamp **NO DECISION IS MADE YET**; Richards concerned Cassidy will be a problem), Arbuckle responds, "Strong feelings." ...by passes Richards. During orientation in Warren and contradicts Beauchamp's FALSE testimony. Contrary to Beauchamp's FALSE testimony, he had not yet changed his earlier decision. (Beauchamp tour July 1997- August 13, 1999).

, **"Told. Richards <u>in our initial interview (</u>July 1997), she had unlimited license to coordinate with the off-site legal offices because her function is a function clothed with the authority through the Commander."** Took under advisement. Richards' request and concluded it was not necessary to allow her to rate the off-site attorneys. And T, P.23, L. (s) 22-P.24, L. 24. Compare scope of Richards' duties, AR 27-26, Rule 113, **P.** to Beauchamp Dep T, P. 85 — L. 2, Richards was the rater and the final rater of the people in her

office at Warren. T, P 85 – Li17, they were separate subordinate commands. Q. Duties to manage legal office through supervision of subordinate supervisors T, Right. P. 136, Saying Legal office are limited to Warren office. Are you saying Army established separate legal offices in offsite locations at TACOM, T P.136, L. 21, Did Richards identify the AR —that identify how DA established Legal offices, Only Counsel of the Army can established a legal office within subordinate command (AR 690-300 Ch 302, at 7-3.

Beauchamp T, P. 137, L. 14, and Q: Are you saying you took it upon yourself to establish subordinate legal offices within TACOM—A: I did not. Q: P.138 — L. 1, did you ever remove a civilian attorney from underneath. Richards' supervision—a: Not that I recall;

Compare to Andrews Tes, above, and to Richards' direct duties, to supervise attorneys, and act as the Chief Legal advisor to all heads of TACOM organizations, no matter where located.

Beauchamp Dep Tes, Q, Is it your testimony that the off-site locations were separate legal offices of TACOM A: They were separate and they were off-site. Dep T, P.72, See Beauchamp, Tes, attempts to say – separate legal offices." By group and by organization, L. 5-7, "No they were not (part of the TACOM Chief Counsels' legal office – They were part of the office of the activities.

Beauchamp uses TDA as excuse. States – Anniston had an officer in legal invested authority and responsibility for the command... P.74 – L. 11, Product of off-site legal offices was legal advocacy.

P.75 – L. 1, Q: Can Richards overturn legal decisions at off-sites. A: "Authorized to question those decisions. I would have responsibility for

communicating with Commanders of those activities, and advising the commander; compare to Richards duty to make all final TACOM legal Decisions, PD, V-IV, P. 203. Q: Did you provide Richards technical legal supervision A: – Obviously, I have no capability to provide her technical supervision (if to seek other advice). Beauchamp Dep, T, P.77, P.82 – L. 3. Relied on Korte saying no policy. T P. 82 – L. 22, Q: When did you make that decision A: I didn't think it (rating), necessary or appropriate for her to discharge her responsibility [as what he describes as a role of staff supervision although there is no such thing... Compare, , Dep T L.(s) 4-6, Richards has authority for staff supervision (to the Schedule Supervisory Guide (GSSG,) V-IV, P. 127, Supervision over employees in Schedule (GS-1 to –GS-15 requires that the immediate supervisor be the initial rater, one supervisor per employee with technical competence in area supervised. Supervisor must spend 25% of time supervising).(role of Dan Mehney as the TACOM PARC, Principal Assistant Responsible for Contracting to the HCA, Head of the Contracting Activity- TACOM CG (the Commander always assumes the role of HCA). If ARDEC was a separate command, the ARDEC Commander would have a separate role as the ARDEC Head of Contracting Activity).

Former Chief Counsel, SES, Dawes, addressed his decisions in setting up the supervision and rating chains of the TACOM-Rock Island attorneys, prior to his retirement. Although Dawes does not reach the basis why he found anything but his arrangement unacceptable, the basis are the regulations cited above, which Richards presents.

The Chief Counsel has always been the initial and senior rater of the Chiefs of the different divisions.

Richards Declaration at Pl Ex 83 (D) Animus, ROI, My Doc, § IV-12, P. 294.

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The Chief Counsel has always been the initial and senior rater of the Chiefs of the different divisions. Richards Declaration at Pl Ex 83 (D) Animus, ROI, My Doc, § IV-12, P. 294. Dawes testifies, "TACOM was in the midst of the process of integrating the off site locations when he retired. Involved heavily in the issues related to the off site attorneys. You might say I led the planning in that area. Involved in devising the rating scheme for off site lawyers. We considered all the options. The MOU was a compromise agreement. There were a number of proposals on the table in conjunction with assembling the formal way that integration would occur. A proposal had been made that would have. Husson (Director of ACALA) the rate. Did not find this acceptable. It ended up with my Warren Business Chief being the rater/immediate supervisor of Kay Krewer. I was the senior rater. The compromise was that. Husson became the intermediate rater. V-XII, T, 179--215, V-XII, 172- 181; See MOU, setting the terms of the agreement, V-V (B), P. 2.

Krewer, Chief of TACOM-Rock Island (ACALA) Legal Group addresses the participation of the Deputy Chief Counsel, Ms. Emily Bacon, and Ms. Krewer in. Dawes' planning. "Through discussions with. Dawes and Ms. Bacon, a plan was devised for

the ACALA Legal Office to become a branch of the TACOM Procurement Law division (in Warren). The immediate supervisor / initial rater would be. Allan Kalt, Chief of that division. . Dawes would be the senior rater. . Husson, the Director of ACALA at the time would be the intermediate rater. That this would give some influence from the ACALA site. For the subordinates in my office I would be the immediate supervisor and Kalt would be the senior rater. Krewer affidavit, V-VIII, P. 42. Krewer affidavit I, at P.(s) 4-5, ¶10, Pl. Ex. 27, V-VIII, P. Krewer Aff I, DA Policy, Attorney rating, Dawes and Richards integration at Rock Island, P. 42. Compare Mehney learns about PBG and QDR cuts at ARDEC AC, addresses his MOU with ARDEC.

APRIL 11, 1999, AUSA'S FOURTH "ACT" AUSA STATES the fourth action she complains about occurred in April of 1999. This is where the cg officer at the Alabama location, Colonel Potts. He allegedly directed his staff attorneys at the Alabama location not to speak with Richards without his permission. That's the allegation. In fact, that's what the proofs show in this case, the admissible evidence shows, and this is through the chief attorney at this location les mason. Colonel Potts asked that all information requests from TACOM is sent to him so that he could better monitor the work that was done by the legal staff, and they were getting conflicting requests from different locations, and he wanted to make them consistent to maximize the efficiency of his unit. There is no suggestion of impropriety, of discriminatory motive or retaliation whatsoever.

Potts' April 11, 1999 email to the Anniston legal Office, directing attorneys not to speak to Richards, V-V © P. 79.states, "Mason

-Les, Effective upon your staff's reading this, the following is in effect: Taskers from TACOM-Warren Legal----real, imagined; directed, implied, or tacit; recurring, one-time; special, emergency, urgent, or routine----to by any member of the Anniston Legal Office, via whatever means, whether it be electronic, paper, or in person----e-mail ,web-Pg, facsimile, VTC/DTV / Conference call, letter, memo, brief, note, report, TDY, or local, in meetings, conferences, or site visits----will only be responded to after the express clearance of the undersigned or the CEA. Where there may be question or doubt with the above, the intent is to be nothing other than all inclusive and inclusionary. Pott's 4-11-99 email, ROI, My DOC, Supervision and Rating § VII-39, P. 831 at PI Ex 83 (G). V-V (C), P. 79.

Potts was senior raters of Mason; Richards was intermediate rater. Potts Chief Executive Assistant (CEA) Nathan Hill, a GS-15 non-attorney, was the immediate supervisor/ initial rater. Beauchamp was notified of Potts' lack of cooperation and did nothing. Violation of AR 690-300, Chapter 302 at 7-8 P.s 9, 10. April 20, 1999 Les Mason telephoned Boley, the Warren attorney responsible for putting together the report with a negative. He said that his Commander is going to require that all of Anniston's significant action reports be submitted to him first. Potts, views separate reporting such as ours unfavorably, preferring that all Anniston reporting to TACOM go through him. (See Art's message April 21, 1999 at ROI Supervising and Rating, § VII-40, P. 832).

Potts, a BCH and Director, TACOM BOD, attended weekly executive VTC meetings with Richards sitting in the back row; for one year before the

official transition October 1998; the BOD meetings, including the February 19, 1998 Meadow Brook Hall off-site; Potts was aware Korte (who reneged on his promise to go to Army GC with Army policy memo) told Beauchamp and Newberry they could do what they wanted with the rating scheme.

Potts played a significant role in Beauchamp's October 7, 1998, decision by falsely informing Beauchamp that Richards during the September, 1998 visit to Anniston told the attorneys she would be their immediate supervisor, initial, and senior rater and that made Beauchamp mad (relayed by Newberry), Sept 1998 trip to Depots Richards affidavit, P.. 9. Compare Bacon. Decl. at Pl Ex 74 and ROI "My Doc. Animus at § IV-14, P. 304; V-VIII, P. 64. Potts' resisted Richards being in the rating chain P.s 13-22 emails 19, 20-22, See RDecl, ¶ 507, V-III.. Richards addresses responsibility for coordinating, integrating supporting legal counsel throughout the Command; right to request information from anyone anywhere in TACOM related to the area for which she has responsibility. She is his Chief Legal Advisor. Plaintiff's SJH exhibits Part VII, entitled "Rating, section VII-41, Pg 833. Potts was not satisfied with Richards as intermediate rater, Potts' email to Newberry in response to the October 7, 1998 announcement that Richards was intermediate... V-V(C) P. 10. Objectives to keep Richards informed of significant actions and respond to her requests are absent from. Mason Appraisal objectives, V-V(C) P. 7. 6-17-99, Potts "overrides" Chief Counsel. He states, "As senior rater he disagrees with Chief Counsel. Potts argues ANAD significant legal actions belong to him. Chief Counsel explains

again her duties and gets no where. No response from Depots to Chief Counsel's request for each attorney significant actions for the AMC's End of Tour report". . Potts refusal to "allow" ANAD legal to send significant contributions interferes with Chief Counsel's task to integrate the legal offices. Chief Counsel impeded in meeting her TAPES objectives, in giving technical direction to Anniston attorneys; Anniston Legal Office's submission for the four star Wilson's report . (See "Duties" in Section II of Richards' documents, which were made more difficult because she was not the immediate supervisor, initial rater and senior rater of her off-site attorneys through which in accordance with her express duties she was to advise the Anniston Commander. Id § VII-40, P. 831; § V II-41. P. 833; § V II-42, Interference in CC's mission to keep CG out of trouble, P. 833,) § V II-43, § V II-44, § V II-45, § V II-46; § V II-48.

August 9, 1999, Newberry, Beauchamp, and Potts', decide to wthdraw Richards' authority to intermediate rate Mason, after Anniston sent an email to Newberry requesting that Richards be removed as intermediate rater. Mason and Richards did not know whether Potts acted alone August 9, 1999 before the Change of Command, August 13 1999 or whether it was directed from TACOM-Warren Mason retrieved the August 9, 1999 e-mail response from Newberry to Potts executive officer, Corrigan, stating he concurred in the removal. No similar direction went to RRAD. No discussion about the matter took place with Richards before or after the decision. Mason emails the Aug.9, 1999, Newberry authorization, to Richards and AMC Deputy Command Counsel,

Femino, who informs Mason, Korte, as qualifying authority (GS) needs to review situation V-V ©, P. 81 Aug 17-18, 1999, Mason is directed to remove TACOM coordination standards from appraisal objectives by personnel Aug. 17, 1999, Richards asks Mason to find out who authorized removing her as intermediate rater, Aug. 9, 1999. V-V (C) P. 80.8-18-99, Mason sends Richards a copy of Potts 4-11-99 message. V-V © P. 79.

Richards asks Mason to find out, who authorized removing her as intermediate rater, Aug. 9, 1999. V-V (C), P. 80. Mason emails the August 9, 1999, Newberry authorization to remove Richards as intermediate rater to Richards` August 18, 1999. . V-V (C), P. 81.

August 17, 1999, Mason's e-mail to Richards, copy furnished Nick Femino, the AMC Deputy to the Command Counsel, Korte. Sandra White, Nathan Hill's secretary had telephoned Kathy Philips, Mason's secretary, to direct her to remove the Chief Counsel as Mason's intermediate rater. She was further directed to tell Mason that he was forbidden to add the objective to his TAPES to keep the Chief Counsel informed of significant legal actions.

More false statements by Newberry and / or Beauchamp.

Newberry testifies,

> "(When you authorized Anniston to remove the Chief Counsel as the intermediate rater of Anniston attorneys that was in response to E-mail, Correct?) From Corrigan, one of the Anniston's Commander's high level people? Answer, Yes, I believe that's true.(Corrigan asked in E-mail if Anniston could remove the

Chief Counsel as intermediate rater of the Chief Depot Counsel, TACOM-Anniston). Yes. (You responded, within a few hours of receiving the request.) After discussion with the CG. (You would not have told Anniston if General Beauchamp had not delegated you the authority, Correct?) Let me just state this again, it is important for me to establish this fact. I was not Richards rater so I don't feel that I should have been doing things that directly impacted her so I think I would have had the good sense to go see the Commander and find out what's the decision before I conveyed anything to anybody. (Would you think you did different, (send out the message without asking Beauchamp) if you knew that Beauchamp testified that he never learned about this action until well after it happened?) I would not have done it if it were contrary to guidance Beauchamp gave me. If Beauchamp would have said, leave her the intermediate rater, I obviously would not have sent out my message. (I understand that, but I don't think Beauchamp has testified that he told you not to do it. Beauchamp has testified he did not know it was done until after you sent the E-mail?) My comment to you is that I don't recall the minute details to all of that. (That's fair). I don't know why he doesn't recall and I don't know why I would have done anything without discussion with him for the reason that I just mentioned to you. Pg 31 Beauchamp testifies falsely. Customarily this would have been a discussion at BOD...and that was the purpose of the four to which. Richards was invited and expected to attend

from the very outset....Pg 112, Ln 9. Richards in re examination asks Beauchamp, I recall you testifying that you were not consulted before Newberry made the decision that Anniston could remove me as intermediate rater, is that true? Is this the event that occurred three or four days before the Change of Command? Richards states, yes. Answer: Verlyn, I was not aware of that until it came up in the proceeding here. Had I been aware of that and that happened I would have countermanded that direction. So, what you are saying is that he orchestrated that by himself? What I'm saying is if he made that decision and I don't know that he did..... Richards, There is a message here that he did. See documents, rating, section VII, dated August 9 at .....responding to Corrigan's (Anniston's) request that Richards be removed as intermediate rater of the Anniston Chief Depot Counsel. Beauchamp states, I would have said, we're not going to do that because that is contrary to what I put in place already..... I never would have taken such an action; that if I were going to make a change, I would have made a policy change (at the time Richards was the intermediate rater of all off-site "Chiefs." Newberry continues, (And didn't tell Richards that she was being removed?) I don't know that I did or I didn't. (If she has testified unequivocally that, you did not tell her she was removed? Investigator stops the answer) at L. 6." [September 22, 1999, the game became more complicated. .Richards entered the game. She emails Newberry stating that Potts withdrew her

authority to intermediate rate and "Please fix." V-V C) V-V (c), P. 84. He responds he will "look into it, when he gets back from St Louis], Ln 7, (Do you recall a time when you were on TDY to St. Louis late September 1999 when you received a message from Ms. Richards saying that Colonel Potts (Anniston Commander) had removed her as intermediate rater and would you please correct that?), yes. (Do you remember how you responded to her?) No, I think I told her I would get in to it. I wasn't aware of it then but I think I told her that I would get in to it. L. 12, (You think you told her you weren't aware of it but you would get in to it when you returned?) I think she was asking me to look in to it, to fix it. Do you think you said I am not aware of it but I will look in to it when I return?) I believe that's right. P. 90, L. 12.

Newberry did not speak to Richards until October 15, 1999 about this subject. He came to Richards' office and said that the newly arrived CG Caldwell had removed Richards as intermediate rater of all Richards' attorneys (without discussing it with Richards). If Richards had not found the truth she would have been set up to believe that. Newberry and Beauchamp (whose tour ended August 13 1999 had nothing to do with Richards' removal). (Do you recall discussing this topic with General Caldwell?) Which topic? (The topic of rating off-site attorneys, or being intermediate rater/ final rater by Ms. Richards; that you discussed this topic with him some time in mid October 1999?) No, I don't know where you got that conclusion? (It is my understanding that you discussed this with General

Caldwell about mid October 1999?) Where did you get that conclusion? Line6, Richards states, there is a message in the file. Norton states there is a message in the file provided to Radford to that affect. P. 9, L. 4, I'm trying to remember, I may or may not have had a conversation with General Caldwell, but I do not recall the specifics of when, or none of that stuff. At some time did you talk with Caldwell (followed Beauchamp as TACOM August 13, the day Beauchamp ended his tour) and encourage him to remove. Richards as the intermediate rater of Anniston attorneys, TACOM-Rock Island, TAOM-ARDEC, and TACOM-Red River attorneys. P. 92, L. 1, (And, if it was Beauchamp that gave you the authority to send the E-mail to Corrigan is there a reason that you would have told Ms. Richards that it was Caldwell who made that decision?) L. 4, Tell me that again. Ending at Ln 25, Pg 92. If it was really Beauchamp who gave you the authority to send an E-mail to Corrigan to say, yes she's off; is there a reason why you would have told Bacon and Richards that it was Caldwell who made the decision? I'm having a very difficult time remembering any conversation I had with Caldwell, so my supposition would have been, if I was in that discussion with Caldwell, I would have said, notwithstanding the Beauchamp decision the debate goes on . The Chief Counsel is not happy about where we are. The other players out there who are her equivalents have strong feelings as well, and you are going to have to make a decision on your Command tour as to how this is going to be dealt with...and so again not telling you any factual assessment, if I did what your suggesting, Caldwell would have said we are going to stay where we are, at least for a while so that he (Caldwell) can

make his own assessment which would have left her off as intermediate rater, or else I would not have done these things. Do you recall telling Emily Bacon that Caldwell made the decision that Richards was to be removed as intermediate rater of all off-site attorneys? Not specifically but that would have been a continuation of where we were at that moment in time, right? L. 7, (Do you recall that you then came to tell Ms. Richards that General Caldwell had made the decision that Ms. Richards would no longer be the intermediate rater of any of the off-site attorneys?) No, I don't recall that but again, as I asked you, that would have been exactly where we were with the most recent Beauchamp decision prior to Caldwell's arrival, correct? (If you had responded to Corrigan's E-mail August 1999, and the first time you told Ms. Richards was more than two months later, **October 14**, 1999, what would be the reason why there would be that lapse?) I don't know I don't know, and I'm having a very difficult time remembering any conversation I had with General Caldwell, so my supposition would have been, if I was in that discussion with General Caldwell, I would have said, and so again not telling you any factual assessment, if I did what your suggesting, and "General Caldwell would have said we are going to stay where we are, at least for a while so that he (General Caldwell) can make his own assessment which would have left her off as intermediate rater, or else I would not have done these things". L. 21, P. 93, Radford states, I think we've beat that one enough.

Richards states, CG Caldwell said he would review all the rating schemes at all the sites, and I would

get my opportunity to be heard. He said he would probably do this at a Board of Director meeting. He said I might not like what he decides, but I should accept his decision. He said I would be given the opportunity to give my side (I pictured myself being on trial at the Board of Director's Meeting with the Commanders/Directors of the off-site locations saying their attorneys belonged to them). He said he needed me on his team as a team player. He said there would be no decision made that was disparate. I did not respond to this. (If I did respond I would have said if I still believed I was being more disadvantaged than others **similarly situated** would be in the same situation as I am now). He told me he could not change the past; he could only go forward. Doug Newberry said, you mean you want to be treated the same way we have treated the others? I said yes. I repeated to the CG that I was attempting to keep him out of trouble. I told him that I certainly hoped someone would be advising him soon. He asked if he were now named an Agency Principal. I said, "No." V-VIII, Decision, Newberry Caldwell, P . . . 81;
Conversation with Femino, Rating, P. 85; MFR Discussion with, Chapin, P . . . 87; (Caldwell's Oct 14, Decision)... December 8, 1999, CG Caldwell made a partial "not good enough" fix by designating Richards the senior rater of "Chiefs" of the off-site divisions. Femino affidavit, V-VIII, P. 80, Caldwell, decision, to remove Richards as intermediate rater of all off-site attorneys. Richards's affidavit, V-VIII, P. 81; Conversation with Femino, MFR Rating Richards affidavit, V-VIII, P... 85; MFR conversation with Chapin. Caldwell's Oct 14, Decision, Richards affidavit, V-VIII, P. 87;

December. 8, 1999, Mason asks status of intermediate rater decision; MFR, TACOM BOD "Mini-Trial"; Richards' Aff, 12/28/99, Compare Caldwell was mistaken that only commanders can initial and senior rate an employee. Dep, T, 13- 92, V-XI, Pg(s) 150-(reason for partial correction). Only SESs and GOs can both initial rates, supervise and senior rate... V-V, P. 18.

EEO Counselor informal investigation ended September 19, 1999. Potts 'acts' pieces of the one continuing violation continued through the informal process, 4-11-99, message sent by Potts to Chief, TACOM- Anniston Legal Division, Mason, CF all legal office personnel and Nathan Hill, Potts' Chief Executive Assistant (CEA), a non- attorney, Mason's immediate supervisor / initial rater, violates GSSG and Army policy. The above direction violates the cited regulations P. 6....Army policy, AR 690-300, Chapter 302.7 §7-2, P. 3; §7-8., P. 6; GSSG; Richards' authority, independence, It would violate head of legal office performance evaluation, if Mason was the head. An MSC has only one head of the legal office, the SES, §7-3, a & b, P. 11, AMC Reg. 600- Intro, Definition of Chief Counsel, P. 158, I-5 (b) -2. head leg officer of a MSC legal office, MSC has only one Chief Counsel. P. 160. §7-3, a & b, P. 11.

TABLE OF DISTRIBUTION AND ALLOWANCES (TDA) IS A CATEGORY OF 'ACTS, WHICH THE AUSAs FAILED TO ADDRESS. TDA IS SIMPLY A TRACKING PROCESS AS

TO THE DISTRIBUTION OF DA FUNDS THROUGH AMC HQ TO THE MSC AND ITS ORGANIZATIONS. IF AN EMPOYEE LN RICHARDS; TDA, SHE CONTROLS THE MANPOWER SPACE AND FUNDING FOR TRAVEL AWARDS, SALARIES TRAINING PROMOTIONS, ET AL. REASSIGNING THE OFF-SITE EMPLOYEES TO THE TDA OF THE BCHS LOCATED AT TACOM-WARREN WHO WERE RESPONSIBLE FOR THE MISSION AND FUNCTION THOSE EMPLOYEES PERFORMED, WAS THE SECOND STEP IN THE INTEGRATION PROCESS.

Beauchamp's decision to place the TACOM-Rock Island attorneys on the TDA of the Deputy for Life Cycle Management (DLCM) was made after Richards 's May 6, June 7, and June 10, protected protests, very soon after Beauchamp became aware of Richards' notice of intent to file an EEO Complaint naming _Beauchamp and Newberry as principal agency witnesses.

The first Richards officially learned of it was at the July 19, 1999 Board of Director's (BOD) meeting. See "Counseling Memo of Record, dated July 29, 1999. Richards was aware lower level folks were engaged in the planning for some time. Goldsmith, Chief of the Business planning office assured Richards that off-site attorneys were being reassigned to Richards' TDA. He testified 2000 FFC that at the time he retired June 1999, he believed it was happening. V-XII, P.s 183-189; T, 118-145.Goldsmith's testimony is in sink with Ms. Krewer, Chief of the TACOM-Rock Island Legal group Affidavit II, V-VIII, P.s 17-24. Wherein she states,

> "In the summer of 1998 Beauchamp unveiled his plan for TACOM of the Future-reorganization along product and functional lines. Throughout the planning process I was given to understand that the functional realignment would include

the legal office. That is the Legal office would be placed on a single Table of Duty and Allowances (TDA). Previously each legal office had been on a separate TDA. ACALA Legal Office, for example,_was on the ACALA TDA. TACOM was directed to assemble single Command personnel Inventory Roster in July 1998. The TACOM Legal Office was shown as a separate entity on proposed organization charts. Nothing happened to challenge my assumption that the TACOM Legal office would be on its own TDA until June 1999. I started getting communication from both the Rock Island point of contact for Corporate Management, as well as personnel from the Deputy for Systems Acquisition / Life Cycle Management organization. It was not until July 1, 1999 that I raised the issue and was finally told that I would be placed on the DSA / Life Cycle Management TDA. Putting my organization under the control of the "head Project Manager" was I believe, contrary to Army policy and regulation. I was aware at this time that Ms. Richards had given notice of her intent to file an EEO Complaint against Beauchamp and others. (June 7, 1999). See AR 27-1, Army Regulation 27-1, 5-3, (c), Contract lawyers should not be collocated with Director's of Contracting, or their equivalents and should not be rated by them. Army policy mandates Army lawyers not be rated by Directors of Contracting or their equivalents, and Contracting Officers not be rated by requirements types

Beauchamp believed it A-ok for contracting folks to be rated by requirement types. RDecl, ¶¶568-582

Beauchamp, exclusion from meetings, Contracting Officer chains]; in this context their equivalents include the project managers responsible for the systems, and the requirement folks, those who have pressures to meet deadlines, V-III, / (M.S.P.B.), Tab E, RDecl ¶ 66. See AR 27-26, Lawyers' Independence, are applicable. See P. 11, A lawyer shall not permit a non-lawyer who employs, pays, to direct or regulate the lawyer's professional judgment, (Impossible to fulfill, when those subordinates are technically supervised and rated by a non-lawyer). See Terms of Employment ¶5, XIII at Pi. P. 19.

See Richards protected Activity to Beauchamp, May 6, 1999, the day Richards left for long term sick leave (major depression); June 10, 1999, when she returned and Beauchamp referred to Richards' case (June 7, 1999, initiated EEO Counselor contact).

December 8, 1999, CG Caldwell Refused To Correct TDA. Gianfermi Brought It Up At The BOD.

Protected Activity to Caldwell October 15, 1999. Newberry asked me if I would be willing to speak with Caldwell. I said I would be glad to. Caldwell said that I had never really talked to him about my case but I seemed to have been alluding to it at times. "I informed Caldwell I had been making every effort to keep him out of the issues in my case. He asked me to explain a number of things. I explained to him how I had been disadvantaged by not being given the same tools other leaders similarly situated were given, such as being the supervisor of my off-site attorneys, rating them and having them placed on my TDA in the new TACOM reorganization. He asked me who was treated in a different manner. I gave him some examples: the former Chief Counsel, Dan Mehney, the Director of

Contracting, and now the Deputy for Corporate Management, and the Deputy for Systems Acquisition. I told him Dan Mehney was rater of his off-site people at ARDEC and ACALA as of May 1996. I told him Dan Mehney had sent a message to Resource Management stating how important it was that he not only is the senior rater but that he has control of the spaces and the funding. In other words the people responsible for helping him carry out his mission would be on his TDA. He has been given this in the reorganization. I described in much detail all the interference with my ability to carry out my mission that had come from Anniston. I indicated to him that I feared my telephone had been monitored. I told him someone had repeated the content of the teleconference between the attorneys from TACOM to Greg Potts. I basically was telling him I believed Doug Newberry had been manipulating him, but I did not come right out and say it. Instead I said, "I don't know what was said between the two of you. I told him that Doug had told Anniston that I would no longer be the intermediate rater of Les Mason on 9 August. I told him that Doug told me today that he spoke to Beauchamp first. I told him I had asked Doug to correct and he had not. I told him I had the documentation to support what I was saying. The result was that he, the CG. Was deciding to support the retaliatory action. The CG said I did not need to be the rater to make people do what they should do. I could go to him and he could make it happen. (The comment reminded me of the time when Andrews said something similar to me). I responded with," You mean unlike other leaders, who are official supervisors and can direct things to happen, I have to go to you and say, "Please help

me." He did not respond. I told the CG that unlike other leaders like Dan Mehney, the DSA, some of my off-site attorneys are now stuck on the TDA of the Deputy for Systems Acquisition/Life Cycle Cost, the Project Managers. I said there was an Army regulation that states no contract attorneys will be collocated, or rated by the Director of Contracting, or his equivalent. The DSA is at least the equivalent of the Director of Contracting. I said it has always been considered even more important for attorneys to be out from under the influence of Project Managers and others who might influence them. There are for that matter AFARS provisions that say even the Contracting officers should not be under the influence of Project Managers (PMs). The Project Managers have always been considered the drivers. Let's get this done any way, anyhow! I said the regulation did not even contemplate that lawyers would be "owned" by PMs (control assets/spaces and funding). I said I needed the same ability as other leaders to control the spaces and the funds. I needed the freedom to decide whether an asset should be moved from one location to another. I needed to be able to balance the workload. I needed the funds to direct a particular attorney to attend a specific training class, a conference, or to work on teams with attorneys from other sites, or to attend meetings with me. I was the only one who could reasonably rate how

The attorneys were giving legal advice to clients. AR-21-1, 7-1, 15-3 entitled Management states at. Technical supervision: The contract lawyers technical chain of supervision and assistance flows from the TJAG's Contract Law Division through the MACOM SJA or JA and through the installation,

agency, or organization SJA, JA, or Command Counsel to the contract lawyers.....states that contract attorneys shall not be collocated or rated by the Director of Acquisition or his equivalent

The August 9th message from Robert Corrigan as directed by the TACOM- Anniston Commander, states in part, "Based on the last BOD, (Board of Director's meeting, July 19th), which I attended, and therefore have been asked to root out an answer, it appeared that Ms. V. Richards tried to get the CG to bless having all the legal offices on her TDA. As I recall, the CG flatly refused to move the personnel to the TACOM-Warren TDA."

August 24, 2000, Aaron Goldsmith, retired TACOM Director of Business Planning testified, that he was in meetings about how the TDA would be setout in the new TACOM, planning TDAs; at the time he retired in June 1999, it was his understanding that all the attorneys would be placed on Richards' TDA. It had been a sticky issue. There was the issue of who had the line of authority and who did appraisals. The one star ARDEC Commander felt he needed his own person (attorney).

In the spring of 1999, the TACOM CG dissolved TACOM -ACALA. The Rock Island site, for identifying its geographic location is now referred to as TACOM-Rock Island. On 19 July 1999 (Tuesday), Richards attended a Board of Director's meeting. One of the subjects was TDA. There was no mention of lawyers. The subject being discussed arose toward the end of the day. The subject was TDA realignment related to the recently approved reorganization of TACOM. No mention was being

made of attorneys She asked Beauchamp, "What about the lawyers?" He treated her with disrespect and insult by withholding his decision and telling her for the first time only after she asked that he had no intention of placing her attorney representatives on her TDA. He publicly humiliated her by announcing his decision in front of all the BOD members, and did not tell her the truth. He said, "The lawyers would stay where they are. " She responded with "I am the Chief Counsel of TACOM, and it is my position the lawyers should be on my TDA. He said, "Noted." decision to place Richards' off-site attorneys on the TDA of the Deputy for Systems Acquisition rather than on her TDA disadvantaged her, as compared to those similarly situated, SESs/GOs, Heads of Organizations. She felt angry. She felt she had been treated with total disrespect all along. She glared at him. Placing her attorney on her Table of Distribution and Allowances (TDA) would have given her control of funding for their salaries, awards, training, and travel... This had a direct effect on Richards' ability to carry out her express mission/functions and meet her TAPES objective to integrate the different geographically located legal offices in to one legal office.

August 9, 1999, Newberry authorizes Anniston to remove Richards as Intermediate rater of Anniston attorneys. Email responding to Corrigan's (Anniston's) request, references Beauchamp's "flat" refusal to place off-site attorneys on Richards' TDA, Tab J (27)

Richards states,

> "Implementation of TDA realignment is in process. Geographic differences are being ignored. There is no legitimate reason to put

the off-site attorneys anywhere but on the Chief Counsel's TDA. My independent role mandates that I am assigned the lawyers who represent me and assist in carrying out my mission. TACOM off-site attorneys are not being placed on the Chief Counsel's Table of Distribution (TDA). Off -site folks in other areas no matter where geographically located, being placed on the Table of distribution (TDAs) of those senior in their chain. TACOM employees located at Rock Island will be either on the Table of Distribution (TDA) of the Deputy for Systems Acquisition located at Warren or on the TDA of the Deputy for Life Cycle Management located at Warren. People located a t ARDEC are placed on the TDA of the Deputy for Life Cycle Management located at Warren. I do not have control of off-site attorney spaces or funding. I am not able shift manpower space to sites where it is needed most. I am impeded in balancing workload. I do not have control over off-site legal offices training funds, travel funds, equipment funds, and award funds. This impedes my ability to recognize off-site attorneys with awards. It impedes my ability to direct them to travel and participate in conferences, to attend meetings concerning issues involving claims, federal court litigation, appeals, protests, civil litigation etc. and to attend certain training functions. I am responsible to see that attorneys are properly trained. I am responsible for all these TACOM matters. I represent the Army as to all legal matters

related to all of TACOM's official business. The attorneys are my "arms" They must be responsive to my advice and direction and not be subject to the influence of those they advise. AR-27-1 mandates specifically that contract law attorneys should not be collocated with Directors of Contracting or their equivalents, and should not be rated by them. The Deputy for Systems Acquisition is equivalent to the Director of Contracting. The Director of the IMMC (requirements responsibility) is equivalent to the Director of Contracting. His title has been changed to Director of Commodity Business Units and he and his representatives have been placed inside the Deputy for Systems Acquisition's organization. The Deputy for Systems Acquisition is equivalent to the Director of Contracting. He is responsible for all of TACOM systems. If the regulation intended to protect attorneys from client influence in this manner, it certainly did not intend that attorneys would be "owned" by their major clients.

The same regulation mandates that attorneys have access to funds so those attorneys can visit I have control of these funds. Employees who work at the TACOM-Rock Island site have been put on the TDA for either Corporate Management or the Deputy for Systems Acquisition/Life Cycle Costs. They are located in Warren. The attorneys located at Rock Island have been put on the TDA of the Deputy for Systems Acquisition. When I asked Krewer, the Chief of the ROCK Island Legal group to attend

(DTV) when I initially briefed the new TACOM Commanding on the Legal Office, she was after some struggle allowed to watch but directed not to speak by the Deputy for Systems Acquisition. BACON, Gianfermi, messages, dated 6-11,12,14,16, 1999, TDA realignment of off-site functionals to TDA of male BCHs Exclusion from Meetings TDA, May, June, July, 1999 emails, Gianfermi thinks it can be done TAB J (29) She was clear and open that the off-site attorneys were not subordinate in any way to the Warren attorneys, either formally or informally. The off-site Chiefs were not subordinate to the "Chiefs" at Warren and she worked to get higher grades for them. She made herself the "action attorney" personally working many major issues with them. (R- Krewer Aff I, Id TAB P (18), Pg(s) 69-79, at Pg). The August 9th message from Robert Corrigan as directed by the TACOM-Anniston Commander, states in part, "Based on the last BOD, (Board of Director's meeting, July 19th), which I attended, and therefore have been asked to root out an answer, it appeared that Ms. V. Richards tried to get the CG to bless having all the legal offices on her TDA. As I recall, the CG flatly refused to move the personnel to the TACOM-Warren TDA."

TDA decision was made in July 1999 very soon after Beauchamp became aware of Richards' notice of intent to file an EEO Complaint against. Beauchamp and Newberry, The first Richards learned of it was at the July 19, 1999 Board of Director's (BOD)

meeting. See "Counseling Memo of Record dated July 29, 1999.

115 (3) APPENDIX

Supreme Court, U.S.
FILED
OCT 31 2008
OFFICE OF THE CLERK

Case No. 07-1587

IN THE

Supreme Court of the United States

In Re,

Verlyn E. Richards, Pro Se

V.

M.S.P.B Respondent

And/ Or

Department of the Army

Rehearing Petition

To

Petition for an Extraordinary Writ

In the

Nature of Mandamus

Or,

In the Alternative,

On Petition for a Writ of Certiorari

To the

United States Court of Appeals

For the Federal Circuit,

And/ Or

United States Court of Appeals

For the Sixth Circuit.

PETITION FOR A WRIT OF CERTIORARI

Verlyn Richards,

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Appendix, Part (C)(supplemental brief appendix (PSA) impeaches Federal Circuit/M.S.P.B/ AJ findings and conspirators, proxies (TACOM CG, Thompson (2003-2004), ARep, AUSAs', OTJAG attorneys, Interim DCG, SES Mehney; AUSAs' expert psychiatrist /psychologist witnesses' (Drs. Benedek and Clark), and psychiatrist, Dr. Saul Forman material false representations /reports by comparing them with the record. PA, P. 58.

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15. Richards makes repetitive protests against the agency's late FOIA submission and

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16. Richards makes repetitive protests against the agency's late FOIA submission and responses. [See App, Statement of Material Facts ¶ 1, ...43

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18.

1. The Federal Circuit, M.S.P.B. and AJ (AJ) **failed to carefully examine Richards' involuntary retirement appeal (App) and affirmative defenses (ADs), allegations of coercion, duress and misinformation,** ....Appeal, Pg(s)1-5 ¶ 4(a-l)...including disabilities. by giving deference to the district court's grant of SJ to Defendant and lightly dismissed Richards' discrimination / retaliation claim so did not examine and allot weight to events April 15, 1996- October 16, 2004, when the district court erroneously granted summary judgment to Defendant, the suspension period, September 24, 2004 (when Richards was unceremoniously dismissed from the premises) to Richards' retirement September 25, 2005(eleven months by, adopting the agency representative's misrepresented argument,

> "Res judicata applies to Richards' discrimination claim. .....Virtually all the incidents referenced in the subject appeal, which occurred up until August 2004 are included in that Federal District

Court Action." ARep's Response (ARR), ¶2, to Richards' involuntary retirement appeal.

Initial Decision (ID): "[Richards] has not made a nonfrivolous claim of coercion. **[Richards] does not allege the agency subjected her to duress or misinformation, or that she was mentally incompetent at the time of her retirement."**

Compare Excerpts, Involuntary Retirement Appeal (App)Affirmative Defenses,¶4 (a-i), P. 5.

AD(a), "Discrimination... hostile and abusive environment... disparate harassing, insulting, and publicly humiliating treatment, illegal and disparate decisions, and retaliation, materially altering the terms, conditions, privileges, and benefits of her employment (including express duties), based on sex, disability, and retaliation for repetitive protected activity from 1996 to this day, advantaging those not in protected classes, similarly situated in ways, which disadvantaged Richards, and caused severe emotional and physical harm," Protected activity and Awareness of Protected Activity to covered entities: App ¶s13, "Richards repetitively engaged in protected activity," See violated terms of employment.

AD (b), "Proxies, who knew or should have known the actions were illegal discrimination, with reckless disregard of their duty failed to properly investigate and take remedial action (Faragher), repetitively retaliated against Richards for her protected activity, **through devious deceitful and illegal means,** creating a

hostile and abusive work environment via continuing violations to this day, and finally with the power of the enterprise behind them conspired to rid the Army of Richards, by leaving her with no other choice, but to retire).

AD(c), Proxies, attorney agents, and proxies expert witness psychiatrists' unclean hands and or misconduct through devious, deceitful, and coercive tactics committed fraud on Richards and the court) App ¶ 21 Unclean Hands, Retaliation, And Conspiracy To Rid The Army of [Richards]: It slowly became apparent that CG Thompson and Szymanski, "encouraged" by the AUSAs, accelerated the continuing malice, ill will, and revenge for Richards' protected activity, with a specific purpose in mind. Rather than uphold justice, and ensure the integrity of the system, they played a "dirty game" by ratcheting up the adverse acts January 2003 through 2004 and creating such intolerable working conditions that Richards would either quit on her own, or they would drive her to misconduct and create a reason to fire her.

AD(d) **Intentional infliction of emotional and physical distress:[**Participants]who, with the power of the enterprise behind them, **subjected her to emotional, physical, and financial duress, misrepresentation, and coercion from 1996 to the present, accelerating and broadening the scope of their adverse discriminatory, retaliatory, harassing conduct, and illegal and disparate decisions, after Richards transferred to federal court, October 2002,"** The agency was aware that she has developed serious

health conditions; and that she was in financial straits having no income for most of the 2003-2004 rating period (before her suspension) because of the agency's violation of TACOM -R, 600-5, SPHM June 3, 1997, Ch 6-, 6-7; 6-8, .Pg(s) 198-200 (Advanced Sick Leave) Tab C (13).

AD (e) Defamation of reputation

AD(f) Violation of statute, executive order, Army directives and regulations, which they knew or should have known were unlawful. Violations, Tab (s), at "C;" and Tab I (3), Pg(s) 8-13; Appeal, November 22, 2006 ¶21 Unclean Hands, Retaliation, And Conspiracy To Rid The Army of Richards: It slowly became apparent that CG Thompson and Szymanski, "encouraged" by the AUSAs, accelerating the continuing malice, ill will, and revenge for Richards' protected activity, with a specific purpose in mind. Rather than uphold justice, and ensure the integrity of the system, they played a "dirty game" by ratcheting up the adverse acts January 2003 through 2004.by creating such intolerable working conditions that Richards would either quit on her own, or they would drive her to misconduct and create a reason to fire her. They went after Richards, using every coercive and illegal tactic available, ignoring statutes and regulations, even when Richards pointed them out.

AD(g), Abuse of process and /or discretion: Attorneys and DOD investigator abuse of the investigative and discovery process in administrative and federal court proceedings; denial of a fair and impartial investigation, e.g. Preparing and /or encouraging

management witnesses to testify falsely; DOD investigator denying Richards' right to ask relevant and material questions during the FFC."

AD(g-h), Economic and emotional duress [Participants]who, with the power of the enterprise behind them, subjected her to emotional, physical, and financial duress, misrepresentation, and coercion from 1996 to the present, accelerating and broadening the scope of their adverse discriminatory, retaliatory, harassing conduct, and illegal and disparate decisions, after Richards transferred to federal court, October 2002,"

AD (h), The agency breached the parties' April 19, 2005, valid and lawful August 19, 2005 hybrid oral / written settlement agreement by negotiating in bad faith and repudiating material terms, April 29, 2005,wherein **Richards alleges deceit, nondisclosure, coercion, misrepresentation of material facts and duress** by the agency representative, and CG Thompson. Reinstated Petition, determination of validity, finding agency breached, facilitation and acceptance of material terms of oral settlement agreement into the record, and thereafter enforcement, received by the board, June 14, 2005, Docket No. CH-0752-05- P. 5, [Just as a court may review a settlement not enforced on the record to determine its validity a court can also examine a repudiated settlement agreement. See App. Arg.¶ 4, **Duress, coercion, and misrepresentations by the agency forced Richards into involuntary retirement;** [AJ stated during the December 2, 2005, negotiations that she

didn't "know anything about THAT], (missing from AJ Manrose's 'docket', even though he responded, June 17, 2005). AJ Pula's assistant subsequently mailed the original to Richards. PFR, PA, P. Richards asked twice for AJ Puglia's dockets, received resistance. Addendum, PFR, PA, P; App ¶s 2, 4, 8, 13, 15, 21. The agency in bad faith failed to fulfill its promise, to negotiate all the unsettled terms...ARep made a false statement of material fact with knowledge of its falsity in order to induce Richards to act. He failed in his duty to disclose that he had no intention to negotiate the amount of the only unsettled term, the award /early out/or whatever the agency wanted to call it, after the parties agreed to all other material terms.¶s,7-8; He unequivocally offered to negotiate the three additional terms on April 19, 2005,(R- ¶ 10, "Consideration flowing from Richards was substantial (included retirement and foregoing agency actions after suspension). She relied on his statement to her detriment by negotiating with third party beneficiaries, and having to default. "Restatement (Second) of Torts § 551(2)(a). Damages high, house foreclosed etc.). The AJ (Manrose) was in the process during the earlier negotiations, wherein the agency representative's offers were rejected. He is aware and knows that the agency is aware that Richards never intended to retire; believed firing her would assist her major appeal; and voluntarily retiring could diminish potential damages (front pay) on her federal discrimination case.

AD (I) Denial of Richards' minimum due process rights in the investigation of Richards' security clearance by violation of security regulations and executive order, and acting in bad faith. App, ¶4, V-I "...illusory where the agency violated Executive Order, #12968, § 3.2. (c),Access to Classified Information, 1995, (implemented by DODD), and chose two of the agency's proxies, named participants in Richards' discrimination case, one as the proposing official (Mehney) and the other as the deciding official (CG Thompson) to determine, whether Richards retains her secret clearance, and /or whether she would be suspended without pay, Tab C (16), § 3.2. (c);App ¶ 2,3,4, Richards' Declaration(RDecl); App ¶s13 Richards repetitively engaged in protected activity and 14) Beauchamp, even more than Andrews retaliated; App ¶7) Andrews, Beauchamp, and Newberry played revengeful devious/ deceitful, and controlling mind games with Richards, App ¶s 11, 13.

2. The AJ adopted the agency representative's 'copy catted' version of AUSAs' misrepresented "ten" acts, "when 60-70 are closer to the mark. FN 8.

> "Richards did not show that discrimination or retaliation contributed in any manner toward her claim of involuntariousness." Markon, 71 M.S.P.R. at 578. "[Richards] alleged the agency violated the U.S. Constitution and discriminated against her. "The U.S. District Court for the Eastern District of Michigan

granted the agency's Motion for Summary Judgment in the appellant's 1999 sex discrimination suit alleging agency officials subjected her to remarks such as "little legal gal,""my girl attorney,""dear," and "young lady;" (AUSAs' first "act.' Derogatory Comments by Andrews and Kirby, RDecl, ¶109...), seated her in the back row at video conferences (VTCs) (AUSAs' second "act.'); denied her awards (AUSAs' seventh "act.') and supervisory opportunities (AUSAs' third "act.' rating off site attorneys, and Fourth "act", Anniston Depot Commander Potts direction not to communicate with Richards in any fashion without his permission. April 11, 1999, RDecl, ¶336; refused to "accept" her (AUSAs' Sixth, and Tenth "act,"... Not selected as advisor to Source Selection Authority Source); rated her performance disparately low(AUSAs' seventh "act.'); failed to include her in meetings (AUSAs' sixth "act,' Not Excluded from the Board of Directors at TACOM RDecl, ¶277,) or allow her participation on TACOM's Performance Review Board (AUSAs' eighth "act.'); and limited her hiring authority (AUSAs' fifth "act,' Legal Office Staffing: ¶ 124.) **See Docket No. CH-0752-05-0128-I-1: Agency File**, Tabs 4(c) & (I). PA, P; PA, P.; Seventh "act," criticized her performance (AUSAs' seventh "act.' SES Performance Award (PRB); P 20. *Eighth "act," Nonparticipation on SES Performance Review Board (PRB); Ninth "act," Law office facilities. Comparison testimony. PA, P.

3. The AJ adopted the ARep's misrepresentation of direct evidence of retaliation. ID, Pg 4, "In this appeal she alleges General Beauchamp told the Equal Opportunity investigators that he did not give her performance awards because she had difficulty working with people and misunderstood the nature of her position (.Misrepresentation of material facts, direct evidence of retaliation based on protected activity). **PA, P... 167.** ADs (a), (b) **Compare, Beauchamp admits he failed to grant Richards SES performance awards because of her protected protests to him.**

   "Basis for downgrading Ms. Richards' appraisal objectives and my reasons for not granting her any performance awards, were that, Verlyn had difficulty accepting decisions that she disagreed with. She lacked understanding of her position as a staff officer, her role, and the role of a Commander. She had difficulty working with people that did not fit within...constructive... Environment of an SES is different, more complex, and complicated." .... Examples of issues she disagreed with ... seating, rating, TDA (Table of Distribution and allowances)." (Can you give some examples other than the areas that were identified as allegations in her Complaint?) No. T. 68, Ln(s) 1-25, 69, Ln(s)1-25,74, 18-25 and75, V-XII; RDecl ¶556.

4. The CCF investigation of Richards' security clearance in 2001-2002 and the March 14, 2002 determination that Richards would retain her clearance foreclosed

a reinvestigation on the same derogatory information in 2004.

Federal Personnel Manual, chapter 732, subchapter 1, paragraph 1-6b. §154.41(b) (1) (ii) and (2) (ii). National Industrial Security Program Operating Manual NISPOM). § 2-203. **"Previous grant of a personnel clearance must be honored anew without further investigation or adjudication "unless significant, new, derogatory, information that was not previously adjudicated becomes known to the granting agency."]** See EO 10865, §(c), see ISCR case no. 98-0320 (April 8, 1999), ¶ q, PA, P. 38.

5. In 2001, an OTJAG government attorney, Schmidt, assigned to defend the agency during the administrative process (currently assigned to assist the AUSAs, along with Major Eric Krause) attempted to 'go after' Richards' security clearance after Richards on her own accord submitted significant slot machine losses $150,000, actual damages to the agency, identified in Richards' 'therapist, Benaway's July 5 (Tab F (16), Pg 180-181), and July 12, 1999 letters to the agency, Tab F (17), along with Windsor Gambling Records, Tab MA (3); Motion for Sanctions against Army, Tab MA (5), Pg(s)14-26. See AD (g), Abuse of process and /or discretion. She turned them over to security, despite the documents being submitted to support these damages to security and being under the control of the administrative judge.

6. In 2001-2002, the Army CCF performed a thorough investigation and found that: Richards did not partake in illegal drugs; alcohol consumption was

next nothing; did not participate in illegal activity, a model citizen, mother, friend, and leader. Richards' Values, January 14, 2002, Senior System Evaluation Report to CCF, MA (6), Pg(s)14-2; April 11, 2001 General John Caldwell's Notice, Consideration to Temporarily Withdraw Eligibility for Access to Classified Information, and Richards' April 12, 2001 Response, Tab MA (2), Pg(s) 2-5,. Request for financial statement, and financial statement with attachments. The financial investigation showed $135,000 salary, no dependants, considerable assets, bills timely paid, and savings of more than $100,000... Richards' 2001, security application also informed security she had gone to casinos, other than Windsor (MGM and Motor City, Tab MA (6). Government hired psychiatrist, Forman, concurred with Richards' treating mental health professionals, two psychiatrists, Kilaru and Shah, and clinical psychologist, Benaway, major depression, compulsive gambling in remission, and no defect in reliability, judgment, or objectivity.

March 14, 2002, CCF finds,

> "The decision was based on all available information" ... "We took into account your recent compulsive gambling activity and your current diagnosis of major depression, moderate without psychosis. Your security clearance is contingent upon your continued compliance with your mental health treatment and **avoiding personal behavior, which would render you ineligible.**" Tab MA (7).

7. Federal Circuit, AJ / Board committed harmful legal and factual error by failing to find AGENCY CONSPIRATORS violated CFR§154.10 (c) (6) by, concluding Richards could not rely on applicable EOs or implementing regulations intended to preclude bias in the investigative process **(AD (f))** and finds Executive Order 12,968 does not create any substantive or procedural rights, when it has the force of a statute...11-13 and **failed to examine agency violated EOs' security clearance procedural directives and implementing regulations (PA, P.29)** Violations, Appeal Tab (s), at "C"; and Tab I (3), Pg(s) 8-13.

(1) "DODD 5200.6, **Definitions (e) "Employee**," ... a person, detailed or assigned to, an agency, including an expert or consultant to an agency....; personal services contractor; or any other category of person who acts for or on behalf of an agency as determined by the appropriate agency head."

(2) CFR§154.10, (C) (6), **Restrictions On Investigators:' Investigators:** shall ***refrain from accepting any case in which the investigator knows of circumstances that might [not 'will', but 'might'] adversely affect his fairness, impartiality, or objectivity.***'"The Director DIS shall establish appropriate alternative means whereby information with potentially serious security significance can be reported other than through DoD command ... Such access shall include utilization of the DoD Inspector General "hotline" to receive such reports for

appropriate follow-up by DIS. DoD Components ...will assist DIS in publicizing the availability of appropriate reporting channels. Additionally, DoD Components will augment the system when and where necessary. Heads of DoD Components will be notified immediately to take action if appropriate.

(3) CFR §154.31(c) Appendix E Request Procedures, §A (a), Authorized requesters and personnel security determination authorities, *per* 'Restrictions on Investigators' at *32 CFR §154.10, (C) (6)* shall refrain from accepting any case in which the investigator knows of circumstances that might **[not 'will' but 'might']** adversely affect his fairness, impartiality, or objectivity, when conducting investigations under the provisions of this part.

(4) "EO 13087, Security policies designed to protect classified information must ensure consistent, cost effective, and efficient protection of our Nation's classified information, while providing fair and equitable treatment to those Americans upon whom we rely to guard our national security. Art, 1.

(5) "DODD 5200.6 § 3.1. "All employees shall be subject to investigation by **an appropriate government authority;"** CFR §154.31 and Appendix E, Request Procedures; For an investigation to be "appropriate," it must be conducted by an authorized investigative agency. Definitions, (c) "Authorized investigative

agency": **agency authorized by law or regulation to conduct** ... investigation of persons, who are proposed for access to classified information; DODD 5200.6, §3.1 (b) Eligibility for access to classified information shall be granted only to employees who are United States citizens for whom an appropriate investigation has been completed;

(6) §4.1, "It is **DOD policy that "All proceedings provided for by this Directive shall be conducted in a fair and impartial manner";** ' except as otherwise provided for by E.O. 10865,' which states, 'Eligibility shall be granted only to employees for whom an appropriate investigation has been completed, a discretionary security decision must be based on judgments by appropriately trained adjudicative personnel and expressly incorporates 10865 provision, **"The United States Government does not discriminate on the basis of race, color, religion, sex, national origin, disability, or sexual orientation in granting access to classified information,"** at 3.1(c), which repeats § 3.1(b) and the EO 12968 provision at § 3.2. (c), "Basis for Eligibility Approval, "All employees shall be subject to investigation by an appropriate government authority."

(7) EO. § 3.2 (a), "Eligibility determinations for access to classified information shall be based on information concerning the applicant or employee that is acquired through the investigation conducted pursuant to this

order, or otherwise available to security officials.

(8) [O]therwise available to security officials," when read together with CFR §154.19 (a), Reinvestigation, "DOD policy prohibits unauthorized and unnecessary investigations, and with EO§ 3.2 (c), "Nothing in this order shall prohibit an agency from utilizing any lawful investigative procedure in addition to the investigative requirements set forth in this order, to resolve issues that may arise during the course of a background investigation or reinvestigation,"

(9) CFR §154.10, C (5) Refrain from using, under any circumstances, covert or surreptitious investigative methods, means information lawfully obtained. 'Serious' questions" cannot be based on significant derogatory information previously adjudicated, when an investigation is a reinvestigation].

(10) DODD 5200.6, Reinvestigations, Access, Eligibility Standards, January 1987 Chapters 2, Criteria for Application of Security Standards, 2–200, page 5 incorporates EO 10865, §(C) DODD 5220.6, incorporates E.O. 10865 at. § 4.3; EO 13087, A. ***L.*** and CFR §154.19 (a), Reinvestigation, "DOD policy prohibits unauthorized and unnecessary investigations; EO 13087, A. ***L.*** Ad, "To conserve investigative resources and to insure that personnel security investigations are limited to those... clearly authorized by DOD policies; organizations

requesting investigations must assure that continuing command attention is given to the investigative request process." It is important that the provision of Executive Order 12356 requiring strict limitations on the dissemination of official information and material be closely adhered to...

ID: "[Richards] has not made a nonfrivolous allegation that the agency knew its indefinite suspension was unsustainable, or that no arguable basis existed for it. Page 5, Richards argues that she should not have been suspended and that the agency should have restored her clearance based on the evidence she provided.(citing FN 6.); Page 5, FN 6, **Her only procedural allegation was that agency violated Executive Order #12968, Access to Classified Information" by allowing Daniel G. Mehney to propose her suspension and Major General Thompson to decide it], does not support an actionable claim; Executive Order 12,968, signed into law by President Clinton, expressly does not create any "substantive or procedural" right that is enforceable against federal agencies. Exec. Order No. 12,968, 60 Fed. Reg.40,245, 40,254 (Aug. 2, 1995).**

Compare,

Executive Orders (EOs), 12968's and 13087's 'boiler plate' provision is intended as 'clarification that the executive branch is not transgressing into the territory of Congress and 'making new law.'

"This Executive order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person."]],

"Where a presidential directive is clearly authorized by the Constitution or is authorized by a statute authorized by the Constitution and the delegation of power is in turn constitutional, the directive has the force of law (Here, equal protection and Title VII), all courts of the United States are bound to take notice, and to which all courts are bound to give effect." *Armstrong v. United States,* 80 U.S. 154, 156(1871).

8. Named participants in SES, Richards' discrimination suit and AUSAs were motivated to influence Forman to change his 2002 opinion concurring with Richards' mental health professionals, which significantly damaged AUSAs' defense. AMC four star, General Kern, CG Thompson's supervisor and rater, who directed CG Thompson to remain in charge of Richards after Thompson's tour ended September 28, 2004; CG Thompson, designated Official Requester and Deciding Authority; SES, DCG Mehney (Proposing Official), AMCCC, SES, Szymanski, and the same attorney agents, AUSAs, Rigdon and Woodard, and OTJAG attorneys, Schmidt and

Krause, assigned to assist AUSAs, who committed fraud on the DC; ARep, Buonocore, assigned to defend agency at M.S.P.B. in a position of potential for undue influence, if he wants a SES and fails to please Szymanski (See Richards' coercion and misrepresentation allegations and supporting evidence of repudiation, settlement agreement (self-contained documents, with a Table of Contents AD (h), Tab MC (43); Dr Benedek and Dr. Charles Clark, AUSAs' expert witness, psychiatrist / psychologist team hired by the AUSAs to defend in Richards' federal court discrimination case (Conspirators), (false material statements in report), and the government selected evaluator, psychiatrist, Dr. Forman hired to evaluate Richards for security clearance purposes (friend of Benedek , who studied under her, made false material statements in his 2004 report and violated procedural regulations); AMC / TACOM security officers, and CCF personnel in a position to be unduly influenced by CG Thompson and Kern, who were considered employees for security clearance purposes, AND THUS, bound to comply with security clearance investigative procedural directives and implementing regulations , **had interests conflicting with a fair and impartial investigation, and knew of circumstances that "might" adversely affect [their] fairness, impartiality, or objectivity in their perspective roles.** CFR§154.10, (C) (6).

9. Although the conspirators were not authorized investigators or properly trained adjudicators they self-appointed themselves to the adjudicative team rather than refraining from any involvement and

illegally triggered the 2004 **reinvestigation,** a forbidden "second bite at the apple." They schemed to among other things to create basis for CG Thompson to illegally trigger a reinvestigation of Richards' security clearance and violated procedural regulations **(AD (c).**

10. Lower judicial bodies erred by failing to consider the totality of the evidence and adopted the ARep's false and material affirmative representations including that CG Thompson and SES Mehney were not named as participants in Richards' DC action.

    ID, "[Richards] alleges the agency subjected her to harmful procedural error by allowing participants in her civil suit to propose and decide her suspension. **"[Richards] named neither Mr. Mehney nor General Thompson as defendants in her civil lawsuit,** which was dismissed on the agency's Motion for Summary Judgment. See Docket No. CH0752 -05-0128-1-1: Agency File," Tab 4(1).

11. Not only were they named, the ARep knew it. **Compare ID,** d***ocuments given to ARep in*** response to interrogatories/ production of documents' (Excerpts , Richards' SJ Hearing Declaration (RDecl),¶ 599-644 CG Thompson)incorporated in App. Statement of Material Facts, ¶ 1, Tab E; and Senior Business Law Attorney, Burt's affidavit, Exclusion from Source Selection, improper seating, Mehney bypassing Richards ...screaming at her.. Tab P (11), Pg 33-34. **PA.** [Violation of regulations applicable to Richards'

duties, authority; Richards makes the final TACOM legal decision. **PA**].

ARep also states,

"He [CG Thompson] found nothing to lead him to conclude the action had been orchestrated by the Department of Justice or that he and Mr. Mehney had to recluse themselves from the case." ***ARep's Response to involuntary retirement appeal (ARR) ¶ 8.***

[ARep also falsely informed the AJ and Richards that there were no regulations that required Thompson and Mehney to recluse themselves. Richards told her she had not looked for them, yet].

12. The AJ failed to examine the nexus between violation security procedural regulations, and the conspirators accelerated and expanded scope of adverse 'acts' to target Richards' illnesses and loss of finances that it caused in the first place January 2003 through 2004, multiple "parallel" acts, **PA,P.** CG Thompson was the major 'player' in the adverse actions and regulatory and FMLA violations, 2002-2004 to this day that the AJ found did not rise to a specific claim of duress. Excerpt Richards' SJ Hearing Declaration (RDecl), *Documents* in response to interrogatories; RDecl excerpt V-III, ¶s 563-567 (CG Thompson) and Burt's affidavit, Mehney). App ¶21 Unclean Hands, Retaliation, And Conspiracy To Rid The Army of Appellant: "It slowly became apparent that CG Thompson and Szymanski, "encouraged" by the AUSAs, accelerating the continuing malice, ill will, and revenge for Richards' protected activity, with a

specific purpose in mind, to create such intolerable working conditions that Richards would either quit on her own, or they would drive her to misconduct and create a reason to fire her. They went after Richards, using every coercive and illegal tactic available, ignoring statutes and regulations, even when Richards pointed them out." They used Richards' illnesses to create false scenarios of poor judgment, the building blocks to trigger an illegal reinvestigation of Richards' security clearance as a means to remove her from employment.

13. The agency's adverse 'acts' before Richards' suspension October 2004, did rise to the level of a claim of duress as the agency, lead by CG Thompson and encouraged by the AUSAs, beginning 2003, ratcheted up and expanded the scope of the adverse 'acts' to target the illnesses and loss of finances it caused in the first place-- **used those illnesses to create false scenarios of poor judgment, the building blocks to trigger an illegal reinvestigation of Richards' security clearance as a means to remove her from employment, and committed an illegal reinvestigation** of her security clearance 2004, by violating EOs and implementing regulations, "

> "ID Pg 4, Fn 3, [Richards] complained about her treatment prior to her suspension, **but did not raise allegations that rise to a specific claim of duress.** " See Richards' Appeal (App) ¶ 3. Pg 4, Footnote 3, She also alleges the agency subjected her to "constant abuse" and false scenarios that made her office look bad."AD(s), b-e. See Richards' Appeal (App) ¶ 3.

14. CG Thompson was a major participants / conspirator in the acts complained after Richards transferred to federal court, October 29, 2002, through and after the time Richards retired (AD (c))", Proxies, attorney agents, and proxies expert witness psychiatrists' unclean hands and or misconduct through devious, deceitful, and coercive tactics **committed fraud on Richards and the court)** App ¶ 21 Unclean Hands, Retaliation, And Conspiracy To Rid The Army of [Richards]: It slowly became apparent that CG Thompson and Szymanski, "encouraged" by the AUSAs, accelerated the continuing malice, ill will, and revenge for Richards' protected activity, with a specific purpose in mind. Rather than uphold justice, and ensure the integrity of the system, they played a "dirty game" by ratcheting up the adverse acts January 2003 through 2004 and creating such intolerable working conditions that Richards would either quit on her own, or they would drive her to misconduct and create a reason to fire her.

    i. January/early February 2003, Chief of Staff, Colonel Gary Carney, in a room full of people refuses to "allow" Richards, the only senior person present in a meeting, to speak, and after she later "called him on it," turns her leave requests over to the CG via DCG, despite fact his role, supposedly, is just to take care of the administrative part. Excess scrutiny, January 23, 2003, Id RDecl, TAB E.

ii. Mrs. Katharine Szymanski, Deputy Command Counsel, who followed Edward Korte, as the AMC Command Counsel sets out to ruin Richards' reputation. January 2003. Szymanski's trip to TACOM to do a Productivity/Review(PQR) of the TACOM, legal office, Lawyers informed Lewandowski that they were attempting to put 'bad words" in their mouths Lewandowski Aff, II, I (22), Pg 86; Id. RDecl, F, Pg(s) 86).; refuses to consider the legal office as a whole, comes to attack at Warren. See **July** 16, 2004, Lewandowski Declaration (Szymanski) (at Pl Ex, 73 and testimony (Mehney).**PA, P.73-74.**

iii. Thompson begins to excessively scrutinize Richards ...directs her not to attend a training class, which he was attending, despite SESs being encouraged to attend. MB (3), Pg(s) 11-15.

iv. May 6, 2004, Dr. Kirsch invoked the FMLA on her behalf; Kirsch letters, dated May 21, June 11, July 9, addressing need for tests, U of Michigan neurologist's diagnosis, upper airways resistance syndrome, August 9, 2004, June 11, 2004, Kirsch certifies tests scheduled for June 22-23 2004, excuse to June 24, 2004; TAB MC (31), Pg(s) June 17, 2004, Dr. Ervin Thompson, Psychiatric Evaluation, TAB MC (32), June 18, 2004, Dr. Bryant Welch, Psychological Evaluation Report, dated June 18, 2004.MC (33) June 22-23, 2004 University of Michigan , Neurology Inpatient Test Results, MC (34) June 22, 2004 TACOM Intel &

Security Fax, Authority to Release Medical Information and Records; TAB MC (35), July 8, 2004, Dr. Saul Forman Psychiatric Evaluation Report(References relied on Benedek-Clark Report to arrive at his conclusions; references submittal of Major Eric Krause, OTJAG attorney assigned to assist AUSAs, Rigdon and Woodard, in Richards' federal case. TAB MC (36); July 9, 2004 Kirsch letter certifying extension needed until July 19, 2004 and diagnostic tests done.TAB MC (37),; August 9, 2004, U of Michigan, neurology test results, Upper Airways Resistance Syndrome. TAB MC (39);

A Number Of Agency Adverse Actions Suspiciously Took Place After Documents Were Submitted For The SJH, July 16, 2004,

v. August 19, 2004, CG Thompson Reprimand Letter, Dated August 5, 2004, MC (41): One day after the CCF decision to revoke Richards' security clearance Thompson reprimand's Richards for her attendance at work being unacceptable, and Dr. Kirsch's medical certification inadequate.

Compare,

Kirsch September 10, 2004, letter stating Richards should not attempt to return to work at that time, latest health problem, losing consciousness at work, early 2004, means her organs are not receiving enough oxygen to function normally.

vi. August 30, 2004 Bacon Memo Addressing

personal observations of Richards' health. MC (47)(clothes hanging off her (weight loss)...appears asleep.

vii. Richards' Ca-2, Application for Worker's Compensation, Kirsch, Attending Physician statement supporting application, ...**returning to work for the Army would be life threatening**; August 9, 2004, U of Michigan, neurology test results, Upper Airways Resistance Syndrome. TAB MC (39).

viii. August 24, 2004 CG Thompson downgrades Richards' Appraisal two levels to satisfactory, and specifically noting her absences from work were unacceptable; she had never received less than exceptional, when Richards was vulnerable, as she had a number of episodes, wherein she lost consciousness at work. She used sick leave or annual used for sick 45 % , 2003-2004;

ix. October 4, 2004, can't contact the person...197.October 9, 2004, Mehney & Richards, emails, Sept. 12&16, 2004.

15. Lower courts failed to carefully examine Forman's two evaluation reports, and thus, failed to realize that the Forman 2004 evaluation failed to meet the adjudicative guidelines. A second opinion is a "second bite at the apple and not 'new' derogatory information, not previously adjudicated..

> "Initial Decision (ID) P. 2, ¶ 2, [Richards] failed to make a non-frivolous allegation her retirement was involuntary **based on the CCF decision to revoke her security**

clearance... There was an arguable basis for the agency suspending [Richards], **the CCF Decision**. ID P. 5, FN 6; P. 6. [Richards] has not made a nonfrivolous allegation that the agency knew its indefinite suspension was unsustainable, or that no arguable basis existed for it. ID, FN2, "According to the agency, the CFF determined ***[Richards']*** **"pathological gambling in partial remission"** was a manifestation of defects in judgment, reliability, and stability...**"Some doctor" diagnosed Richards with dysthymia** ...**CCF** also based its decision on a doctor's opinion the appellant had "dysthymia disorder in remission;" ... [Richards] alleges the agency caused her illnesses by its "constant abuse;" ... She alleges the agency unfairly "targeted" her illness and financial vulnerability...She also alleges the agency subjected her to "constant abuse" and "false scenarios" that made her office look bad... [Richards] has not shown the agency wrongfully suspended her. She indicates that by August 9, 2005, she was unable to work at all, due at least in part to emotional reasons. Appeal File, Tab 7. "ID, Pg, FN2, FN5, FN 6, Appeal File, Tab 11.

16. The conspirators underhandedly passed the Benedek –Clark report, Tab MC (28), which the U S attorney, received, after Benedek evaluated Richards during discovery in Richards' case against the Army, through the system with the assistance of OTJAG attorney, Krause, Szymanski, AMC and

TACOM Security in order to influence Dr. Forman, hired to do an independent psychiatric evaluation of potentially disqualifying and mitigating information fully and properly, and particularly for consultation with the individual's mental health care provider. They violated regulation by selecting what they considered negative 'pieces' of information about Richards, an opinion from an unreliable source (Benedek), which was a second opinion and not new significant derogatory information. It was preadjudicated in 2002.

17. The 2004 investigation was an illegal reinvestigation, a forbidden "second bite at the apple," triggered by proxy and attorney conspirators and based on illegal preadjudicated information to rid Richards from employment. AD (c). 2004, CCF and Forman relied on a pre-adjudicated gambling records subpoenaed by the AUSAs and delivered by OTJAG attorney, Krause, to TACOM security Krause cover letter in investigative file sent to Richards **December 18, 2004** from Army Medical Command **(ten months after CCF received it).**, CCF notes in August 18, 2004 statement of reasons that it received those records **March, 2004,** seven months after Richards submitted her first FOIA request.

18. Dr. Forman, as an employee **and a personnel security determination authority, was required to** comply with executive orders and implementing regulations, and the agency was obligated to educate him so that he would be a

"properly trained member of the adjudicative team. As a psychiatrist hired o do an independent psychiatric evaluation of potentially disqualifying and mitigating information fully and properly, and particularly for consultation with the individual's mental health care provider he not a properly trained adjudicator. He knew or should have known he was to do an independent evaluation of Richards and should have at minimum thrown the Benedek report in the trash. Worse yet he was the AUSAs' psychiatrist expert witness defending the agency in Richards' discrimination suit, Dr. Benedek's friend, and colleague, who studied under her, Forman should have thrown the Benedek- Clark analysis in the trash. PA3;

19.. He failed to refrain from involvement in the adjudication process once he received the Benedek report. Not only was he a friend of Benedek, the US Attorneys' hired expert, he admits that he studied under her. Id 2004 evaluation report. Tab F (28), Pg 282-289. Dr. Forman did what the US attorney wanted him to do, change his 2002 opinion from major depressive disorder to dysthymia a very different depressive disorder, one that Richards' symptoms, personal and professional history, demonstrate, Not Possible.

20. **Forman's 2004 report falsely states Richards went to four casinos.** In 1999 Richards went to Windsor (submitted to CCF 1999), MGM, and Motor City (identified in Richards 1999, security clearance application; 2003, Greek Town (twice in January

2003 and frequently September-December). Forman failed to disclose that Richards had not gambled (slot machines) for about three years, 2000-2003, went 2 times January 2003, and a number of times during September-December 2003 and stopped on her own accord.

21. Forman falsely reports July 2004 that other mental health professionals agree with his 2004 compulsive gambling diagnosis. Richards' mental health professionals disagree. They establish he relied on preadjudicated treating physicians statements that Richards was compulsively gambling in 1999.

22. Forman failed to (1)consult with Richards' treating mental health professionals Id, Ad ?, PA 4; (2) perform a medical exam Ad?, PA 5; (3) follow the DSM-IV criteria to determine based on what Richards tells him in the interview, whether she was compulsively gambling PA 6; (4) perform an independent evaluation by drawing his conclusions just from what Richards told him Ad ?; PA7; (5) report honestly material facts, which Richards stated in the interview PA8; (6) withdraw (should have known re could not reevaluate Richards) Ad ?; PA 9.; and (7) Ad ?; PA10. friend and colleague of the AUSAs' psychiatrist expert witness, Dr. Benedek, defending the agency in Richards' discrimination suit.

23. July 2004 Forman falsely reports that Richards did not go to Gamblers' Anonymous, a preadjudicated issue addressed in 1999 -therapy notes, which Forman admits he did not read, and which establish

Richards did attend. Benaway testified she did. Richards told him 2004 that she did. September 22, 2004 declaration.

24. Dr. Benedek proved her unreliability. She pleases the hand that pays her. Here, the AUSAs, whose theory of the case included painting Richards as the 'ugly duckling and agency proxies as the swan. Dr. Benedek knew Richards did not have dysthymia and made material false statements to support the dysthymia diagnosis (January 28, 2004 report).

    a. **Benedek falsely states**, psychological test results performed by her partner, Dr. Clark showed that Richards is a person, who blames others for her problems. **Compare** Richards expert, Dr. Welch reviewed Clark's data and found,

        "Psychological testing and clinical interviews conducted on Ms. Richards all suggest that she tends to answer questions about herself openly and honestly rather than either embellishing or minimizing her difficulties. This was supported by the validity scales of the psychological tests employed by [Dr Clark]." ...Richards first blames herself for her problems."

Therapist, Benaway testifies,

"Richards' history, symptoms, and times, which I have seen her, when she is in partial remission (Major depression) establishes that she does not and did not have a dysthymic disorder. A dysthymic disorder is a long-

standing level of depression, involving low self-esteem, not feeling important, and feeling in a down mood most of the day. This kind of person can never really have fun. Nothing is really pleasurable. There's just kind of a blah feeling. If they have more serious depression along the way, as they come back, they only come back to the dysthymic level. They don't come back to a full range of affect, mood, positive mood on a regular basis a more positive attitude. They continue to be negative." Benaway Dep, Tab. (Compare Dr. Forman's description of Richards, Forman's July 8, 2004 report (References he relied on Benedek-Clark Report to arrive at his conclusions; submittal of Major Eric Krause, OTJAG attorney assigned to assist AUSAs, Rigdon and Woodard, in Richards' federal case. TAB MC (36) contradicting the "model of a person with dysthymia, Tab F

25. The CCF's August 18, 2004 notice of intent to revoke Richards' clearance and CCF's erroneous findings in reliance on Forman's false statements, finding Richards as having dysthymia, Richards failed to comply with the two conditions upon which she was allowed to keep her security clearance in 2002, "Failure to comply with her mental health treatment," and **failure to refrain from compulsive gambling** were a result of the "conspirators' numerous procedural violations.

26. DODD 5220.6, E2.A9.1.2.2 identifies, a condition *that could raise a security concern,* as information that suggests that an individual has failed to follow appropriate medical advice relating to treatment of a condition, e.g. failure to take prescribed medicine, and adopting Forman's erroneous finding that Richards failed to refrain from compulsive gambling.

27. Influenced by CG Thompson, PA15, are the agency's agent "employees," DODD 5200.6, Definitions (e). CCF violated the regulatory provision TACOM R, 600-5 SPMM, Chapter 14.

> "Richards] can, at [her] own expense, have an additional evaluation of [her] own choosing for evaluation for submission with the US Government Evaluation. TAB MC (27), Pg(s); See Tab MC (23)

28. Richards did go to mental health physicians of her own choosing, June 17 & 18, 2004, TAB(s) F(29), F(30) & F(31) October 11, 2004, ($12,000) and CCF refused to consider them stating they were performed for another reason(which they were not) Richards submitted her treating physician's Ca-20s, TAB (s) F (27) & F (28); with her request for consideration.

29. Benedek **falsely states**, "Richards told me she lost ten pounds," when she told her she lost 40 pounds. Weight loss is a significant factor distinguishing the two diseases. **Compare,** Benaway confirms Richards lost **forty pounds ¶, P.;**

Deputy Chief Counsel, Bacon confirms, that Richards' "clothes were hanging off her."

30. **Richards states** "I certainly did not carry my illness around with me all my life. I was in the performing arts, from the age of three, a dancer, in a varsity show kick line in college, up on a stage doing the Charleston to the twelve street rag with tons of beads, a Canadian Gold medalist professional figure skater, an elementary school teacher, who had children writing skits and making paper mache puppets or building model homes. I was also a high school radio show disc jockey, Chairman of the faculty counsel in my twenties, a stay at home mom for twelve years, who as a single parent, was active in the community, President of a nursery school for a number of years, a volunteered substitute at her children's school, and very active with her children, down hill skiing, swimming, track, and band. One daughter is a surgeon and assistant professor, heading a medical school surgery residency program (Now at Mayo Clinic). My youngest daughter is an engineer, and my son is a graduate of Parson's School of Design with a successful business in New York." (Declaration (written reply) September 22, 2004)

31. Benedek **falsely testified**, "Richards compared herself to a religious person, who walked on water." when Richards actually told her that before she assumed her position as the TACOM

Chief Counsel, her superiors believed she walked on water. See Petition,

32. Forman makes false statements of material facts 2004.

"[Richards] meets with Dr. Shah about every six weeks. In the past, she met with Sandra Benaway, a psychotherapist in Flint, Michigan, but now that she is on medication, which helps her. She told me that she no longer feels the need to continue therapy, except on an as needed basis." page 3, ¶ 2.See [DODD 5220.6, E2.A9.1.2.2, **Compare,**

i. **Richards avers,** "I told him that I did not see Ms. Benaway much, except on an as needed basis," Id September 22, 2004, Affidavit.

ii. **Ms. Benaway testifies,** "Ms. Richards sees Dr Shah regularly but only sees me on an as needed basis. She has continued compliance with her mental health treatment to the present. (See Benaway Dep. Tr. (February 27, 2004) at 28 and 29).I think that Ms. Richards is doing pretty well at this time and seeing me is at her discretion ...on a non-regular basis...She needed to stay on medication and she did that regularly." (Pg 37, Ln(s) 11-15).

iii. **Dr. Ervin Thompson states**, "I cannot image Ms. Richards stating, 'but now she is on medication, which helps her," she does not feel the need to see me. I just don't believe

that Ms. Richards said that_ Ms. Richards has been on medication, which has helped her since March 1999. Dr. Forman makes other statements such as she's "receiving treatment at her work facility. "Obviously, she is not. See Richards' September 22, 2004 Declaration, Tab MC (33), Pg(s) 163-187, at Pg(s) 170-187.

b) Forman made a, false statement that he informed Richards he knew Benedek up front in the interview.

i. **Richards avers,** "I brought Benedek up near the end of the interview. I informed him that Benedek lied by stating I compared myself to a religious person, who walked on water; that she wore a wig and looked like someone's nice grandmother, and I did not recognize her at the deposition. Forman responded by asking me, if I was aware that some orthodox Jews wear wigs, and that he knew her.

c) Forman falsely reports that Richards told him no one told her not to gamble.

i. **Richards states**, "I told him I was never told not to gamble by CCF. We were discussing CCF's determination that I could keep my clearance. I told him that I did not read CCF's letter as forbidding me to gamble. I read it as directing me not to use personal behavior, which is self-destructive, i.e., compulsive gambling (accompanied by significant loss of money as in

1999). My therapy treatment, in addition to working my recovery from major depression focused on stopping my compulsive gambling. "

ii. **Benaway testifies,** "In 1999, Yes; in 2003, No." "Ms. Richards was not compulsively gambling in 2003. She had not gambled for a good two years. In my July 12, 1999 letter, I explained that Ms. Richards 1997-1999 gambling was a way to escape from a deep depression, different from any kind of sadness, depressed mood, such as grieving she had ever experienced. It was a self-destructive means of self-medicating. She had no other defense mechanisms available. When she decided she had to stop gambling in 1999 because she lost so much money; she stopped, not suddenly, but stopped. When she went back again in 2003, she decided she had the strength to control it. She worked hard to control it and eventually got there. She won more than she lost. She owed taxes on winnings in 2003. She did tell me that she went back [She told Dr. Foreman she found machines that were geared to pay a lot of jackpots. "To do this she had to go often." ...It was like facing the enemy, gambling, and learning to control it.

33. "July 8, 2004, Dr. Saul Forman Psychiatric Evaluation Report references he relied on Benedek-Clarke Report to arrive at his conclusions; references submittal of Major Eric Krause, OTJAG attorney assigned to assist AUSAs, Rigdon and Woodard, in Richards' federal case. TAB MC (36); references the Welch and Dr. Thompson reports as Richards

asked TACOM security officer, Bedwell to give them to him after CCF refused to consider them. He ignored them;

i. **Preoccupied with gambling**: Forman never says that Ms. Richards is preoccupied with gambling. He does say she was enjoying her role as the "Empowerment Champion for the Command, drawing in crowds of people, who wanted to hear her speak. (CCF has the clippings from the TACOM Community Report) and she was gardening. Dr. Forman states that I reported that I was involved in social gambling but did not report I had predetermined financial loss. Of course he did not ask me that question. WHAT HE HAS NOT SAID is "she told me that she was preoccupied with gambling."
Forman considers "going back" to the casino ipso facto evidence. Of compulsive gambling. I explained to Doctor Forman that I happened to find slot machines that paid jack pots around $1,000-$1,300, often. If I came often enough I could read what these machines were doing.

ii. **Jeopardized or lost a significant relationship, job, or educational or career opportunity because of gambling**. Dr. Forman makes no mention of Ms. Richards jeopardizing any relationship in 2003. Forman states, "She is still seeing the same man she was dating, when I saw her in 2002. Ms. Benaway states, On the other hand, when Ms. Richards was gambling in

1997-1999, she jeopardized her relationship with her daughters, who were staying with her in 1997. Her oldest was doing a one year surgery fellowship at University of Michigan. Her youngest had graduated from college and starting a job. She lied to them when they asked where she was. They ended up understanding better after they met with me."

iii. **Committed illegal acts, such as forgery, fraud, theft, or embezzlement to finance gambling.** Dr. Foreman states, [Richards told me she paid her gambling debts but is behind in paying her lawyer. Richards avers, "I did not tell him I was behind in paying my lawyer. My lawyer will tell you that I am not behind in paying him. What I recall saying was that my money issues now focus on paying my lawyer. "

iv. Is restless or irritable, when attempting to cut down or stop gambling. He talks about Ms. Richards as being out going. Lacking any signs of tension and was helping out with her new little grand daughter; Benaway states, As far as I'm aware she was not irritable or restless, when she was cutting down in 1999 and stopped."

v. Lies to family members, therapist, or others, to conceal the extent of involvement with gambling. Benaway states, "Ms. Richards told me she went back to the casino in 2003." Dr. Forman makes no mention that Ms. Richards ever lied to anyone in 2003

vi. Committed illegal acts, such as forgery, fraud, theft, or embezzlement to finance gambling. Nothing illegal. Ms. Richards states, "I

did not believe that I was breaking any condition put upon me by CCF."

vii. After losing money returns another day to get even. According to Dr. Forman, Ms. Richards states, that she went often fall, 2003 because she had found some machines that she could read well enough if she went often and paid attention to what the machines were doing she could project, where they were in their cycle. She won about forty "jack pot" tee shirts, and paid taxes on an income of approximately $199,000, which establishes the truth of her statement.

ID Pg(s) 4 and 5, Pg 4, Fn 5, Pg 5, Fn 6, and Pg 6, Fn 7. "Richards does not make a non frivolous claim the agency failed to provide her with the procedural protections required under 5 U.S.C. § 7513, when indefinitely suspending her. Richards failed to allege the agency violated any of the seven procedures referenced in Executive order 12968; [s]ince Richards received no income during that period her options were limited .....unpleasantness;

Initial Decision (ID) FN 6, [Richards] alleges Deciding Official, General Ross Thompson, abused his discretion by failing to request a waiver; ID, FN 6,[Richards alleges], deciding official General Ross Thompson abused his discretion by failing to request a waiver(mistaken belief that no regulation existed that would limit the deciding authority's (CG, Thompson), discretion not to request a waiver, which precludes Richards' continued

access to classified information during the investigation). **Compare,**

34. The agency with assistance of the agency Intel and Security Command and the Medical Command withheld the investigative file until December 2004. That file included substantial evidence, which established that involved proxies, lead by CG Thompson, and attorney agents initiated a conspiracy shortly after Richards transferred to DC October 2002. The motivation was (1) to remove Richards from employment, and (2) to influence Forman to change his 2002 evaluation, which concurred with Richards treating mental health professionals, and thus would support Richards' allegation that the agency caused and exacerbated her serious illnesses. **Plan I**, create false scenarios of other misconduct as another basis for CG Thompson as the official "Requester," to trigger the reinvestigation and remove Richards from employment. See **AD** (c) and (d). **PA,P.** **Plan II**, abuse the discovery process to investigate Richards for specific misconduct; **Plan III**, Set Richards up for psychiatric examination by a psychiatrist, who knew Dr. Forman and might influence him to change his 2002 diagnosis (AUSAs' expert witnesses, Benedek and Clark). Early 2004 the conspirators violated regulation by selecting what they considered negative 'pieces' of "information" a second "**opinion**" from unreliable sources, AUSAs' hired psychiatrist-psychologist expert witnesses Drs. Benedek and Clark's January 2004 evaluation related to the

DC action(not new significant derogatory information that was not preadjudicated information), underhandedly passed it through the system influencing the CCF to accept it in order to influence the "independent" evaluation of the agency psychiatrist, Forman, hired to perform an independent evaluation of Richards.

35. The CCF failed to list the information, which it relied on to reach its decision to revoke Richards' security clearance, refused to give consideration to, and certainly did not explain away, the findings of two nationally known and respected professionals, June 17, 2004, Dr. Ervin Thompson, Psychiatric Evaluation, TAB MC (32), and Addendum, October 11, 2004, Tab F (25) Pg 254-258, , June 18, 2004, Dr. Bryant Welch, Psychological Evaluation Report, Tab MC (33) P. 218-232; and June 18, 2004. Dr. Bryant Welch, PHD, Tab F (24), Pg(s) 233-253; Tab F (24), Pg 233-253.whose evaluations resulted from Richards' exercise of her right to be evaluated by a psychiatrist of her choice. These reports were not from an unreliable source.

36. §154.56 Procedures. (a) No final personnel security determination shall be made on a member of the Armed Forces, an employee of the Department of Defense, a consultant to the Department of Defense, or any other person affiliated with the Department of Defense without granting the individual concerned the procedural benefits set

forth in paragraph (b) of this section when such determination results in an unfavorable administrative action (see §154.55(a). (b).....

37. The statement shall be as comprehensive and detailed as the protection of sources afforded confidentiality under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) and national security permit. ... Prior to issuing a statement of reasons to a civilian employee for suspension or removal action, the issuing authority must comply with the provisions of Federal Personnel Manual, chapter 732, subchapter 1, paragraph 1–6b. Richards states, " need the investigative files to learn why CCF adopted the view of Dr. Saul Forman over the view of Drs. Thompson, Welch, my treating psychiatrists Kilaru and Shah, and my treating psychologist, Ms. Sandra Benaway. From a review of the investigative file, I would learn if CCF personnel attempted to resolve the differences and inconsistencies, they would have discovered in Dr. Forman's reports that had no basis available to support one conclusion or another; ¶ I need the investigative files to see if the CCF has psychologists/ psychiatrists, who reviewed the files, or if not, whether other CCF personnel reviewed the files. I should have the opportunity to analyze the investigative file prior to having to reply to the proposed indefinite suspension. The investigative file is relevant and material to answer how the CCF resolved the contradictory diagnosis, major depression, of my treating medical professionals' opinions, the Drs. Thompson and Welch's reports, as compared to Dr. Forman's 2004 action "ruling

out" his own major depressive 2002 diagnosis, and without any explanation substituted "dysthymia." Whether or not I had one or the other relates directly to the issue, whether or not Dr. Forman's 2004 report is suspect, considering he gave no basis in his 2004 report for his change of view, despite never having seen between me between 2002 and 2004. He never would have used the words, rule out," if he meant to do an "add-on" a diagnosis of dysthymia in 2004. This would not make sense either. For one thing, he describes me as "outgoing, and told me that I was a great example of what his profession can do for people. A better reason is that the diagnosis of a dysthymic disorder is not made after a person has a major depression disorder. If the patient has a recurrence it means they have chronic major depression (so explains Dr. Thompson). It follows that the investigative report is important to determine if Dr. Forman considered all the factors, which he needed to consider as a basis for his conclusions. Forman adopted Benedek's diagnosis, which she presented, with no rational basis as support; to answer why the CCF placed no emphasis on my treating medical professionals' five years of records and no emphasis on Drs. Thompson and Welch's reports; to the DOD 5220.6, E2.A9 guide lines, which list disqualifying and mitigating factors, which must be addressed to reach a conclusion.

38. Forman failed to do a required medical exam, TACOM R. 600-5 SPMM, Chapter 14. "Government psychiatrist handles the

medical exam as well, and that a medical examination must be conducted prior to the psychiatric evaluation;
[Richards] can, at her own expense, have an additional evaluation of her own choosing for evaluation for submission with the US Government Evaluation... TAB MC (27).CCF denied Richards' request for reconsideration. CG Thompson recommended Richards security clearance not be granted.

ID P.4 Fn 3,, 5, Fn 5, Fn 6, P, 6, Fn 7.Richards was suspended from duty for the eight months preceding her retirement, and thus not susceptible to any workpiace abuse by the agency during that period." [Since [Richards] received no income during that period her options were limited ...unpleasantness; Pg 6, FN 7, Richards failed to allege the agency violated any of the seven procedures referenced in Executive order 12968, ID, Richards failed to allege the agency violated any of the seven procedures referenced in Executive order 12968, ID Pg(s) 4 and 5, Pg 4, FN 5, Pg 5, FN 6, and Pg 6, FN 7.
ID, [Richards] does not make a non-frivolous claim the agency failed to provide her with the procedural protections required under 5U.S.C. § 7513 when indefinitely suspending her...Richards failed to allege the agency violated any of the seven procedures referenced in Executive order 12968, ID Pg(s) 4 and 5, Pg 4, FN 5, Pg 5, FN 6, and Pg 6, FN 7. "The agency violated a number

of the seven procedures referenced in Executive order 12968.

ID FN7,
Richards alleges the agency failed to provide all the investigative file and states she believes that the investigative file, when she receives it in response to her FOIA requests, it would contain documents explaining the reasons for the CCF's conclusions, E.g.,[See App, Statement of Material Facts ¶ 1, incorporating Richards' affidavit dated September 22, 2004 affidavit and Mahoney Brief, Tab (40),Pg.115, ("The investigative file is relevant and material to answer how the CCF resolved the contradictory diagnosis, major depression, of my treating medical professionals' opinions, the Drs. Thompson and Welch's reports, as d to Dr. Forman's 2004 action "ruling out" his own major depressive 2002 diagnosis without any explanation, substituting "dysthymia." (CCF failed to list the information, which it relied on to reach its decision to preliminary revoke Ms. Richards' security clearance) .(In making its decision, the CCF gave no consideration to the findings of Dr Thompson and Dr. Welch, whose reports were submitted by Ms. Richards).(CCF relied solely on Dr Saul Forman's 2004 diagnosis, ruling out his 2002 diagnosis of major depression and changing it to dysthymia, despite giving no basis at all for his change, and despite never having seen Ms. Richards between 2002 and 2004.). Dr. Forman's 2004 report is tainted by bias. He adopted Dr. Elisa Dr. Forman's 2004

Report does not support a conclusion of defect in judgment, reliability, or stability, another indication of a possible security concern in accordance with DODD e2, a9.1.2.1.)
See also Request for reconsideration, wherein Richards protests the CG's refusal to delay the oral and written reply to the proposal to suspend Richards, because the CCF August 18, 2004 decision to revoke does not give a comprehensive and detailed written explanation for the agency's conclusion, CCF Response, Tab?]

Incorporating Richards' affidavit dated September 22, 2004]
June 3, 2004, Richards' FOIA request, Tab MC (4); June 14, 2004 Richards FOIA requests to Mehney , Tab MC (25); July 25, 2004, FOIA, Richards again requests the Investigative file, Tab MC (8); Sept. 8, 2004, Simonini states faxed Richards FOIA request form (Richards faxed it to Mehney because at that point she was still dealing directly with him, Tab MC (21)); Sept. 8, 2004 Mehney email, Status of Richards FOIA request, and forwards it to Simonini (G2), stating INSCOM has no record of Richards' FOIA Request, Tab MC (22) ; Sept. 12, 2004, Richards email to Mehney, informs him Bedwell has not found her request for investigative file, which she submitted. Sept. 20, 2004, Thompson grants two-day extension, to Sept. 22, 2004, the day she is to give her verbal reply to her .Saturday, Sept. 18, 2004, Richards email Requesting Thompson reconsider and give an extension, to the Monday, Sept. 20, 2004, deadline to submit

her written response to the Sept. 3, 2004 proposal letter., Sept. 28, 2004, DA Intelligence and Security Command FOIA Office Administrative Denial of Richards' request for Investigative File, and admits it failed to comply with the statute, by failing to promptly provide the file prior to the time set for a written reply; and provide a reasonable opportunity to reply in writing, and to request a review of, the determination up to the date, prejudicing Richards., because it has to coordinate with other Commands. Sept. 28, 2004, DA Intelligence and Security Command FOIA Office Administrative Denial of Richards' request for Investigative File, and admits it failed to comply with the statute, by failing to promptly provide the file prior to the time set for a written reply; and provide a reasonable opportunity to reply in writing, and to request a review of, the determination up to the date, prejudicing Richards., because it has to coordinate with other Commands. Tab MC (37), Pg(s) 189-195 and (38), Pg196. Dec. 18, 2004 Richards receives investigative records from Army Medical Command, Benedek Report &"buck slip, note from Szymanski, which she received from the US attorney's office, Tab MC (42), and passes it to AMC Headquarters security office, G2, (establishing a conspiracy.

CG Thompson's Sept. 2, 2004, Memo of Record, basis for indefinitely suspending and refraining from requesting a waiver to the CCF decision...establishing that he has already made his decision, no matter what Richards submits, Tab

MC (18); Friday, Sept. 3, 2004, Advance Notice Of Proposal To Indefinitely Suspend Richards from her position as Chief Counsel for possible revocation of her security clearance until the CCF's Final Determination. Tab MC (19); Sept. 7, 2004, arrangements to look in investigative file mentioned in Mehney's Sept. 3, Proposal of Indefinite Suspension Letter. Tab MC (20); Sept. 12, 2004, Richards' emails Mehney /Richards found Thompson's Sept. 2, 2004 memo documenting that he has already made his decision and therefore the opportunity to present her case was not "real,." Tab MC (27); Sept. 12, 2004, Richards questions Mehney, referencing the Tuesday, Sept. 6 meeting with him (says its Monday by mistake), when she asked him to support her, and persuade Thompson to request a waiver. Sept. 16, 2004, Mehney's response to Richards' different scenario to what happened as compared to what she has documented as to what happened. Mehney informs her that the CG has already decided not to request a waiver, and had made the decision after the Sept. 3, 2004 meeting. Tab MC (27, Tab MC (31) ; Sept. 20, 2004, Thompson grants two-day extension, to Sept. 22, 2004, the day she is to give her verbal reply to her .Saturday, Sept. 18, 2004, Richards email Requesting Thompson reconsider and give an extension, to the Monday, Sept. 20, 2004, deadline to submit her written response to the Sept. 3, 2004 proposal letter. See AD, (I) Denial of Richards' minimum due process rights in the investigation of Richards' security clearance by violation of security regulations and executive order, and acting in

bad faith. Id. App, ¶4, V-I. October 18, 2004, Motion for Summary Judgment granted to Army, Tab MC (41).

(1) Information of the limited right to representation
(2) Right to review documents;
(3) Identification of reviewer and provided of written notice of and reasons for review results, with appeal rights;

_____ Dec. 20, 2008
Verlyn Richards

115

(2)

Supreme Court, U.S.
FILED
OCT 31 2008
OFFICE OF THE CLERK

Case No. 07-1587

IN THE

Supreme Court of the United States

In Re,

Verlyn E. Richards, Pro Se

V.

M.S.P.B Respondent

And/ Or

Department of the Army

Rehearing Petition

To

Petition for an Extraordinary Writ

In the

Nature of Mandamus

Or,

In the Alternative,

On Petition for a Writ of Certiorari

To the

United States Court of Appeals

For the Federal Circuit,

And/ Or

United States Court of Appeals

For the Sixth Circuit.

PETITION FOR A WRIT OF CERTIORARI

Verlyn Richards,

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PETITION TO Chief Justice, JOHN G. ROBERTS, JR FOR REHEARING OF ORDER DENYING PETITION FOR A WRIT OF CERTIORARI

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4. *Demjanjuk v. Petrovsky*, 10 F. 3d 338, (6th Cir. 1999).
5. *Department of Defense Investigative Service; Directorate for Industrial Security Clearance Review* (10th Cir, 2002); *Hill v. Department of Air Force*, 844 F.2d 1407, 1412 (10th Cir. 1988)
6. *Department of the Navy v. Egan*, 484 U.S. 518 (Fruehauf 1988),
7. Greene v. McElroy, 360 U.S. 474, 493 n.22 (1959).
8. Heining v. Gen. Servs. Admin., 68 M.S.P.R. 513, 521 (1995).
9. *Perlman v United States*, 490 F.3d 928, 933 (Ct. Cl. 1974)
10. *Pennsylvania State Police v. Suders* (Docket No. 03-95) (Sup Ct,)
11. Scharf, 710 F.2d at 1574
12. *Terban v. Dep't of Energy*, 216 F.3d 1021, 1024 (Fed. Cir)
13. Webster v. Doe 486 U.S. at 603.

Richards prays that Chief Justice Roberts suspend the order denying certiorari and present Richards' reconsideration petition to the Court. There is reasonable likelihood of the Court's changing its position and granting certiorari but for exceptional, extraordinary, unique, and compelling intervening circumstances of a substantial and controlling effect and other substantial grounds not previously presented. If the Court grants the petition, Richards believes she will be able to alleviate concerns the Court may have with a pro se petitioner by influencing a law office, which practices in this Court to prepare the brief, joint appendix, and participate in oral argument.

I. **Direct Nexus, Agency's Illegal Discriminatory / Retaliatory Acts, Protected Activity, Intervening life threatening Illnesses, Pro Se Status**

1) The agency denied Richards' constitutional due process rights to seek reasonable redress in the appellate courts, and this Court.
2) A serious intervening illness (diagnosed September 26, 2008, deep vein thrombosis and pulmonary embolism precluded Richards from submitting a corrected supplemental brief, and Appendix Part (C), critical to the questions presented, which she mistakenly submitted as a motion, and which the Court was expecting before the Court reconvened October.
3) Petitioners' supplemental brief appendix (PSA) Part (C), P.? impeaches Federal Circuit/M.S.P.B/ AJ findings and conspirators, proxies (TACOM CG, Thompson (2003-2004), ARep, AUSAs', OTJAG attorneys, Interim DCG, SES Mehney; AUSAs' expert

psychiatrist /psychologist witnesses' (Drs. Benedek and Clark), and psychiatrist, Dr. Saul Forman material false representations /reports by comparing them with the record. **PA, P. 58.**

4) Richards' serious illnesses, which medical professionals notified the agency since 1999 resulted from what she believes are the agency's illegal acts directed at her, significantly reduced her sight, concentration, ability staying awake.
5) The agency targeted her finances 2003-2004 by illegally refusing to loan sick leave and in 2004 suspending her without pay until she was forced to retire 2005. . She expended retirement savings on lawyer fees and court costs over $200,000 by 2004.

National Interest and Importance:

National Federal Employees' Women Organization (FEW) supports this case __ donated money, collected contributions, and held a raffle at its 2003 national meeting.

. The case shows like none other the extent that fraud is successfully being committed in lower courts by government attorneys and lower courts' naivety / vulnerability not only to familiar officers of the court with developed expertise in crossing the line into 'dishonesty. Testimony and documents / regulations not prepared for litigation establish the fraud and the conspiracy among defendant proxies, attorneys, expert witnesses, and investigators to commit it. It will be a sad day for this country if the perpetrators of the fraud are left free to show others how to do it

3. The impact of the Court's decision will significantly deter discrimination in the private and public sector. A powerful agency's proxies, responsible for our soldiers, conspired with attorney agents from multiple offices, investigators (DOD OCI)(CCF), and expert witnesses and repetitively commit fraud upon the courts and Richards to,
    a. Hide those proxies' participation in illegal discrimination and retaliation in reprisal against their SES Chief Counsel's protected protests and her express duty to report them if she believes they are or are about to violate law;
    b. Reduce front pay;
    c. Remove Richards from employment by illegally triggering a reinvestigation of her security clearance.

4. TACOM CGs, MG Andrews (1996-997), LTG Beauchamp (1997-1999), Chiefs of Staff Kirby (1996-1997) and Pankey (1997-1999) Deputy to the CGs, SES Newberry, AMC Command Counsel (AMCCC) SES Korte, Chief of Business Planning, Aaron Goldsmith repetitively committed perjury during the "neutral' 2000 administrative Fact-finding Conference (FFC) and 2003-2004 depositions. Schmidt prepared them for the FFC and violated EEOC MD 10.

5. Time is of the essence for the Court to send a strong message nation-wide that fraud upon the courts will not be tolerated.

> "[T]ampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a

wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated . . . The public welfare demands [it]." *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246, 61 USPQ 241, 245 (1944).

6. The agency actions will shock the conscience of the public, congress, and the courts. .The variety of fraud committed is so inextricably entwined, pervasive that it must be examined together and no other court is able to adequately examine it.

7. Attorneys' fraud subverted the integrity of **four judicial bodies**, the MSPB, Federal Circuit, district court (DC), and Sixth Circuit, such that the judicial machinery ran 'a-muck. Appendix Part B. (verbatim comparisons, impeaching AUSAs' material false representations, **agency proxies' perjury** and the Sixth Circuit / district court(DC) findings.

> "As an officer of the court, every attorney has a duty to be completely honest in conducting litigation. While an attorney should represent his client with singular loyalty, that loyalty obviously does not demand that he Act dishonestly or fraudulently; on the contrary his loyalty to the court, as an officer thereof, demands integrity and honest dealing with the court, and when he departs from that standard in the conduct of a case he perpetrates fraud upon a court. "

a) AUSAs and OTJAG attorneys committed fraud on the district court (DC) October 16, 2004 SJ oral arguments reflected in SJ Hearing transcripts (SJHTs).

b) The Sixth Circuit adopted that fraud as true, failed to review the record, and perpetrated the fraud the "Appendix Part A, 'Opinions Below,' **PA (A), P.?**

c) The MSPB AJ, Board, and Federal Circuit adopted AUSAs' material false representations and the AReps. AJ committed harmful error

ID, "[Richards] alleges the agency subjected her to harmful procedural error by allowing participants in her civil suit to propose and decide her suspension. **"[Richards] named neither Mr. Mehney nor General Thompson as defendants in her civil lawsuit,** which was dismissed on the agency's Motion for Summary Judgment. See Docket No. CH0752 -05-0128-1-1: Agency File, Tab 4(1);

> "[Richards] only procedural allegation was that the agency violated Executive Order No. 12968, Access to Classified Information" by allowing Daniel G. Mehney to propose her suspension and Major General Thompson to decide it **does not support an actionable claim." Compare, involuntary retirement affirmative defenses, ¶ 4(a-i). PA, P.**; and (2) [that allegation] does not support an actionable claim. "[Richards] alleges the agency was not the appropriate authority to investigate Richards for security clearance purposes... the agency subjected her to harmful procedural error by allowing participants in her civil suit to propose and decide her suspension...CG Thompson was improperly designated the official "Requester" and "Deciding Authority" and SES Mehney, "Proposing Official... "[**Compare,**

"CG Thompson and Mehney were named in the DC action and the ARep knew it. Documents given to ARep in response to interrogatories/ production of documents include excerpt, of Richards' SJ Hearing Declaration (RDecl)**,¶s 599-644** (CG Thompson) incorporated in App. Statement of Material Facts, ¶ 1, Tab E; Burt affidavit, Exclusion from Source Selection, improper seating, Mehney bypassing Richards ...screaming at her... Tab P (11), Pg 33-34. Not only did Richards raise allegations that rise to specific claims of duress. See AD(s) (b) to (g-h), CG Thompson was the major 'player' in those 2003-2004 adverse actions, building blocks to trigger an illegal reinvestigation of Richards' security clearance:, which the AJ found did not rise to a specific claim of duress. AUSAs, OTJAGs, Szymanski, and CG Thompson schemed to create another basis for CG Thompson, the official "Requester, to illegally trigger and support a reinvestigation of Richards' security clearance by targeting illnesses and finances, 2003-2004 to create false scenarios of misconduct 'abuse of sick leave' as another basis to support revocation of her clearance and commit fraud upon the courts. ['Black humor' considering the medical test results through 2003- 2006-2008.]. Forty paragraphs in Richards SJ affidavit addressed these acts, the building blocks to trigger an illegal reinvestigation of Richards' security clearance, which standing alone would establish a hostile environment.

i. Denied a training class,

ii. Refused to loan sick leave
iii. Public humiliation by removing her from ongoing attorney selection (violation,)
iv. False scenarios of abusive sick leave,
v. Reprimanded for abuse of sick lave
vi. Downgraded appraisal tied to abusive sick leave,
vii. Violated the FMLA leave without pay, which Dr. Kirsch certified May 2004 due to unconscious episodes,
viii. No income after suspension, October 2004; Home, to foreclosure 2005.

Compare, ARep states,
"He [CG Thompson] found nothing to lead him to conclude the action had been orchestrated by the department of justice or that he and Mr. Mehney had to recluse themselves from the case." ARep's response to involuntary retirement appeal (ARR) **¶ 8**. [ARep also told the AJ there were no regulations that required them to recluse themselves. Richards told her she had not looked for them, yet].

d) AUSAs and OTJAG attorneys played a lead role in removing Richards from employment by abusing the discovery process and violated security clearance investigative regulations by subpoenaing casinos for illegal preadjudicated information. AUSAs via OTJAG Krause passed the AUSAs, Benedek-Clark psychiatric evaluation through the system to AMC security, TACOM security, CCF and Forman.

III. **Granting the writ will aid this court's appellate jurisdiction:**

1. The case involves constitutional, civil rights, criminal, and a significant number of recurring issues of substantial importance intertwined with fraud upon the courts.

2. The court must extend the principles of *Brady* v. *Maryland*, 373 U.S. 83, 10 L. Ed. 2d 215, 83 S. Ct. 1194 (1963) to civil fraud upon the court. Fraud upon the court is fraud upon the court. It must address the split in the circuits as to whether materiality is a question of law, *and whether a* "plan or scheme" must exist in order to find fraud [*353] on the court, "Although there are cases holding that a "plan or scheme" must exist in order to find fraud [*353] on the court, we agree with Judge Wiseman that a scheme, based on a subjective intent to commit fraud, is not required..." "Reckless disregard for the truth is sufficient. " *Demjanjuk* v. *Petrovsky*, 10 F. 3d 338, (6th Cir. 1999).

3. The Court must revisit, overturn, or distinguish *Department of the Navy* v. *Egan*, 484 U.S. 518 (1988). The case shows that "barbarians are at the gate." The Court is the last bastion to protect national security. As courts have repetitively stated high-level proxies set the example for those below. In Egan there was no need to address, when an agency through its proxies retaliates in reprisal for constitutionally protected protests fraud upon the court was not an issue; agency proxies were not involved. Deference must not be given to an

agency "in the interest of national security, when those proxies, many who hold top secret security clearances knew or should have know they or others were violating security clearance procedural regulations or criminal statutes (1001).

4. It is imperative to all federal employees, and those who contract with them and require a clearance that the Court examine and clarify Executive Orders (EOs) 12968 and 13087's boiler plate provision, which the court misinterpreted, and thus, failed to examine the EOs and implementing regulations (harmful error). E.g., DODD 5200.6 reinvestigation directives, (applicable in the instant case, e. g., when proxies are named participants in the discrimination and also named proposing and deciding official in a security clearance investigation. The court failed to see that the conspirators are all agency employees for purpose of security clearance regulations and must comply, had conflicting interests, and failed to refrain from involvement. and violated the regulations by choosing two of the agency's proxies, named participants in Richards' discrimination case, one as the proposing official (Mehney) and the other as the official "Requester" and "Deciding Authority," (CG Thompson, Richards' immediate supervisor, initial and senior rater), who must be selected based on neutrality / no potential for bias. DODD 5200.6, Definitions (e) and DODD 5200.2-,"***shall*** refrain from accepting any case in which the investigator knows of circumstances that might [not 'will' but 'might'] adversely affect his / her fairness, impartiality, or objectivity.'

5. The Court must clarify the obligation of the Federal Circuit to defer to a sister circuit's judgment included in the agency's reply (invalid here). It adopted the AJ's view that there was no need to examine Richards' allegations of agency discrimination, retaliation, and harassment in the first instance for the limited purpose of looking for coercion, duress, misinformation /misrepresentation, *Terban v. Dep't of Energy*, 216 F.3d 1021, 1024 (Fed. Cir) (*Perlman v United States*, 490 F.3d 928, 933 (Ct. Cl. 1974) by, applying the ARep's misrepresented res judicata approach to Richards' discrimination issues, and ARep's response to PFR.¶ 12,

   "Virtually all the incidents referenced in the subject appeal (6th Circuit), which occurred up until August 2004 are included in that federal district court action. Res Judicata applies to Richards' discrimination claims."

6. The Court must extend the principles of *Harris, Faragher, and Pennsylvania State Police v. Suders* (Docket No. 03-95) (Sup Ct,) and Morgan to tailor the test for involuntary retirement in the federal circuit, when Proxies are the perpetrators. The Court must find that a reasonable **woman** in Richards' position would find lack of free choice coercion and duress, when agency proxies, the decision-makers, are participants, and the acts which seriously interfered and precluded Richards' performance of duties 1996 to present violated agency regulations, and establish involuntary retirement. "[F]reedom of choice [is] the guiding principle [in an involuntariness determination]." *Scharf*, 710 F.2d at 1574; *Braun*, 50 F.3d at 1007-08 ("To determine whether a resignation or retirement is voluntary, a court must

examine 'the surrounding circumstances to test the ability of the employee to exercise free choice.'" (citations omitted)). The first *Fruehauf* element is inapplicable to most constructive discharge cases where no adverse action is currently pending; nevertheless, the appellant may still be coerced into an involuntary resignation based on a lack of free choice. *Braun*, 50 F.3d at 1008; *Heining v. Gen. Servs. Admin.*, 68 M.S.P.R. 513, 521 (1995).

7. The Court must clarify that harassment based on sex does not require something be said about Richards' sex. *Haugerud v. Amery School District* (7th Circuit 2001) *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 66, 106 S. Ct. 2399, 91 L. Ed. 2d 49 (1986)), cert. denied, 528 U.S. 988, 120 S. Ct. 450, 145 L. Ed.2d 367 (1999). *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S.75, 80, 118 S. Ct. 998, 140 L. Ed. 2d 201 (1998) (quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 25, 114 S. Ct. 367, Ed. 2d 295 (1993) (Ginsburg, J. concurring)). Harassment is not limited to acts of sexual desire, but rather is a broad term which "encompasses all forms of conduct that unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive working environment." see *Smith v. Sheahan*, 189 F.3d 529, 534 (7th Cir.1999); Shepherd v. Slater Steels Corp., 168 F.3d 998, 1008 (7th Cir. 1999) (quoting *Oncale*, 523 U.S. at 80).

IV. **Merits:** This is a 'clean' case.

1. It is impossible to find legitimate reasons for the agency's conduct, when it violated multiple regulations.

2. Discriminatory motive is shown through direct evidence. Proxies were predisposed to discriminate against Richards and 'acted on it.; stereotypical views of a women in her position demonstrated by their own testimony; and pretext (perjury); disparate treatment advantaging men similarly situated, who were tasked with the same task, to integrate incoming off-site employees into their organizations (BRAC), who were advantaged in material ways that Richards was disadvantaged by giving them the management tools every manager expects e.g. supervision /evaluation of those employees (first step in the integration); control of funding for salaries, promotions, awards, travel and training and manpower spaces __Table of Distribution and Allowances (TDA)(second step); and the third step business processes crossing cites to create a seamless command, one TACOM without regard to geography. Protected protests shortly followed with retaliation and harassment based on sex and protected activity, Even if the decision maker had authority to make the decisions, which they did not, when pretext (dishonesty) is established, it suffices to show coercion, and duress just as it suffices to show discriminatory motive and invidious discrimination (*Reeves)*.

Respectfully Submitted,

Verlyn E. Richards, Pro SE.

CERTIFICATE OF COMPLIANCE, GROUNDS FOR REHEARING

This petition is presented in good faith and not for delay. It complies with the Court's requirement that the grounds stated are limited to intervening circumstances of a substantial or controlling effect and other substantial grounds not previously presented.

Verlyn E. Richards, Pro SE.
Date: November20, 2008

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a) (7) (B).

1. The brief contains 2, 701 words, excluding parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

2 This brief complies with the typeface requirements of Federal Rule of

Appellate Procedure 32(a) (5) and the type style requirements of Federal Rule of Appellate Procedure 32(a) (6).

3. The brief has been prepared in a proportionally spaced typeface using Microsoft Word, 2007, 12 point, Century Gothic

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Verlyn Richards Pro Se
Petitioner
Date: November20, 2008